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Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

14 Cr. 68 (KBF)

5 ROSS WILLIAM ULBRICHT,

6 Defendant.

7 -----x

8 New York, N.Y.
9 January 28, 2015
9:35 a.m.

10 Before:

11 HON. KATHERINE B. FORREST,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA,

16 United States Attorney for the
Southern District of New York

17 BY: SERRIN A. TURNER

TIMOTHY HOWARD

18 Assistant United States Attorneys

19 JOSHUA LEWIS DRATEL

20 LINDSAY LEWIS

JOSHUA HOROWITZ

Attorneys for Defendant

21 - also present -

22 Special Agent Vincent D'Agostino

23 Molly Rosen, Government Paralegal

24 Nicholas Evert, Government Paralegal

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1 (Jury not present)

2 THE CLERK: Continuation of the matter now on trial,
3 the United States of America v. Ross William Ulbricht, 14 Cr.
4 68.

5 Counsel, please state your names for the record.

6 MR. TURNER: Good morning, your Honor, Serrin Turner
7 for the government. With me is Timothy Howard from my office,
8 Special Agent Vincent D'Agostino from the FBI and Chris Evert
9 and Molly Rosen.

10 THE COURT: All right. Good morning to you all.

11 MR. DRATEL: Good morning, your Honor. Joshua Dratel.
12 Mr. Ulbricht is standing beside me. Lindsay Lewis from my
13 office and Joshua Horowitz.

14 THE COURT: All right. Good morning to all of you.

15 All right. We've got some jury instruction matters to
16 deal with. But before we do that let me see whether or not you
17 folks have additional items that you would like to cover first
18 and that relate more directly to what's going to happen as soon
19 as the jury comes in because we'll deal with those first.

20 MR. TURNER: Your Honor, we would like to take a brief
21 detour and have a witness testify out of order -- Alex Miller,
22 from Stack Overflow. He is just a document custodian. He has
23 a board meeting at noon. So we were hoping to have him testify
24 the first thing -- he should on the stand for 10 minutes as far
25 as the government is concerned -- so that he could get back in

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1 time to get back for his afternoon meeting today.

2 THE COURT: All right. Have you spoken about that
3 with Mr. Dratel?

4 MR. TURNER: I have advised him.

5 THE COURT: Mr. Dratel, do you have a view on that?

6 MR. DRATEL: No, your Honor.

7 THE COURT: All right. Well, then I don't see any
8 reason why a short document custodian witness should cause any
9 undue issues. I will tell the jury, as I do when witnesses are
10 taken out of order, that we're going to take a witness out of
11 order and interrupt the examination of Mr. Alford in order to
12 accommodate some scheduling issues and then we'll continue with
13 Mr. Alford after that.

14 Any objection to me previewing it in that manner to
15 the jury?

16 MR. TURNER: No, your Honor. Thank you.

17 MR. DRATEL: No, your Honor.

18 THE COURT: All right. Thank you.

19 Is there anything else that we should deal with before
20 we turn to some of the jury instruction matters?

21 MR. TURNER: Not from the government.

22 MR. DRATEL: No, your Honor.

23 THE COURT: All right. Let me just make sure that I
24 write down that Mr. Miller -- is it Mister?

25 MR. TURNER: Yes.

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1 THE COURT: Alex Miller is a fellow?

2 MR. TURNER: Yes.

3 THE COURT: All right. Here.

4 The Court now has a letter from the government, dated
5 January 28, 2015. I think it came in relatively -- I mean,
6 when I say "late" or "early," it depends on your definition,
7 but it's fine. But I'm not sure Mr. Dratel has had an
8 opportunity to fully review it yet. It came in about, I think,
9 8:15 or 8:20, something like that. So let me -- we'll talk
10 about some of these matters, but we're going to leave open the
11 possibility that upon reviewing the cases the defense may have
12 additional thoughts that they would like to expression other
13 than what's raised this morning.

14 The Court has also received -- and I want to thank you
15 folks for this -- a set of jury instructions with draft changes
16 which very helpfully indicate, in terms of the Court's reading
17 of what you've done, where there are changes that no one
18 objects to, there are just changes, and where there is an
19 objection by one side or the other, there is a comment. That's
20 very helpful to have you folks have combined it in that manner.
21 Am I reading things correctly that you both, if there is a
22 change and a deletion or an addition of language where there is
23 no comment, that I am to take that as an agreed change?

24 MR. TURNER: I don't think so, your Honor. I think we
25 tried our best. I think defense counsel in particular didn't

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1 get a sufficient chance to note any objections to our language.
2 I think we should go through them one by one.

3 THE COURT: All right. Thank you. We'll do that.
4 That's fine. In any event, I think that it is probably useful
5 to go through them individually.

6 Let's turn to -- is there anything before page 4? The
7 first change that you folks have is page 4.

8 MR. TURNER: No. And the government is fine with that
9 change.

10 THE COURT: All right. Mr. Dratel, that was your
11 change?

12 MR. DRATEL: Yes, your Honor.

13 THE COURT: All right. So the Court will accept that
14 change.

15 The next change that I saw was on page 8. Anybody
16 have any additional comments on that? I'm fine with that
17 change if people are in agreement.

18 MR. TURNER: No objection from the government.

19 MR. DRATEL: Yes. Right. That is our change.

20 THE COURT: All right. So that is accepted.

21 The next change is on page 12. I'm fine taking out
22 the desert island example. I'm just curious as to why you
23 folks don't like it. It is an example that does appear in
24 certain standard instructions. Judge Sand had at one point
25 used it. But is it redundant or cumulative, or did somebody

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1 have a substantive issue?

2 MR. TURNER: That was the defendant's proposal, your
3 Honor. We have no objection to that.

4 MR. DRATEL: I think it is a little redundant because
5 you give an example beforehand. Also, to me that one is
6 somewhat conclusive. You know, if you are on a desert island
7 and you see footprints, there is really only one conclusion you
8 can draw. I think circumstantial evidence as a matter of just
9 inference is something that there are multiple inferences one
10 could draw, and that one sort of suggests that the predominant
11 one is the one that should be accepted. And I would think that
12 in the context of inferences that we are going to be asking the
13 jury to draw, there are different inferences.

14 THE COURT: That is fine. Just in my future use of
15 that charge, I know you would be thoughtful about it.

16 Let's turn to page 19, which is the next change. It
17 is not a change. It is just that with respect to defendant's
18 testimony, depending upon how that plays out, we'll modify that
19 charge, as necessary. That's true for anything that occurs
20 during this trial. If there is something which occurs which
21 requires a modification not currently anticipated, you folks
22 should raise that with me and not take our session now as the
23 only opportunity, by any means. In fact, we won't get through
24 all of this today, but we'll, of course, revisit what's
25 necessary.

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1 Page 20, I'm fine with that change, the law
2 enforcement witnesses. Anyone want to comment?

3 (Pause)

4 MR. DRATEL: Well, I think that state of mind of a
5 witness is relevant. It is also relevant in terms of the
6 investigation and prejudice and bias and other issues that are
7 appropriate and relevant. So I would object to that.

8 THE COURT: We struck it from the record pursuant to
9 the Court's instruction of whatever day that was last week.
10 The question is whether or not we need to reiterate it. I
11 don't think it would be appropriate for the jurors to consider
12 that evidence at this point in light of the Court's previous
13 instruction.

14 So let me then think about it. I take it that you are
15 objecting, then, to this additional language?

16 MR. DRATEL: Yes.

17 THE COURT: Let me then take that as an additional
18 objection. We'll come back to that of.

19 Page 21. This is for accomplice cooperating witness
20 testimony, and it is the insertion of a nonprosecution
21 agreement as among those agreements to be considered.

22 MR. DRATEL: And that's fine with us, your Honor.
23 That is more accurate.

24 THE COURT: Those changes are fine.

25 Then page 22. This is I think reflecting that there

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1 is only one cooperating witness and that it was only drug
2 dealing, as opposed to other criminal charges that may be at
3 issue in this particular case being tried.

4 MR. TURNER: That is correct, your Honor. That is
5 more accurate.

6 MR. DRATEL: Are you talking about page 22?

7 THE COURT: Correct.

8 MR. DRATEL: I have no problem with the first part,
9 but the second part I would say that should remain as similar
10 rather than related.

11 MR. TURNER: I have no objection. I made that change
12 for defendant's benefit.

13 THE COURT: So it will stay as similar, not related.
14 So there are three sets of changes on that page. We'll take
15 the first two and not the third. We'll leave similar as
16 similar and not accept the word related. All right.

17 The next change I have seen is on page 26 relating to
18 investigative techniques. I'm fine taking that sentence out
19 about not speculating. Would anyone like to comment?

20 MR. TURNER: I think we're fine with it, your Honor.
21 We'll think a little bit on whether we want any additional
22 language to substitute for that but I think I'm fine with it.

23 THE COURT: All right. Thank you.

24 Now, let me just do a couple of more of these and I
25 would like to do at least one of the more substantive comments

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1 and then circle back.

2 Expert testimony. At this point are we able to say
3 that there is a planned single expert or are there more than
4 one expert planned?

5 MR. DRATEL: At least one.

6 THE COURT: At least one, OK.

7 MR. DRATEL: And perhaps one additional.

8 THE COURT: All right. So there may be two. We'll
9 keep, then, the plural language here. If it turns out that
10 only one testifies, my intention would be to modify the gender
11 appropriately and make it singular. We'll come back to that,
12 as necessary.

13 Use of charts and tables. This was some grammatical
14 changes and I was fine with those changes. This is on page 30.

15 MR. DRATEL: Yes, your Honor.

16 THE COURT: Mr. Turner?

17 MR. TURNER: Yes. Thank you, your Honor.

18 THE COURT: All right. Then in terms of excerpts and
19 redactions, I was also fine with the inclusion of that
20 instruction. It is a relatively standard instruction.

21 MR. DRATEL: OK. That's fine, your Honor.

22 THE COURT: All right. So page 31, we'll accept that.

23 In terms of uncalled witnesses equally available, I
24 understand the defense's reservation of rights, and let's
25 revisit this one as things go on. This is one of those which

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1 will depend on how the evidence comes in.

2 Now, let's start talking about some of the substantive
3 counts. In terms of the distribution definition, which is on
4 page 36, it strikes me that the difference between these two is
5 the breadth of the types of acts which could be considered an
6 act of distribution and the defense assertion being a narrower
7 view. That's the way I interpret this.

8 I went back to the cases cited by the government.
9 Their version is supported by the Sepulveda case, but that is a
10 First Circuit case which talks about brokering. I don't know
11 that brokering has been picked up in the Second Circuit. It
12 may have been. It may not have been. The defense charge is
13 based on the Sand's Model Jury Instructions. Now, that's not
14 the only instruction that can be used. Indeed, I modified
15 Sand's a lot. In fact, this is Sand's old courtroom, so I
16 probably sit in the same place where he wrote a lot of these
17 and modified a few of them. But it is important to stay within
18 the confines of the law when doing so. Sometimes my
19 modifications are simply to make them more comprehensible to
20 the jury, and as idiom changes sometimes it is useful to change
21 them.

22 With that said, does the government have any
23 additional support for its position? Let me just in particular
24 focus the government on the phrase "act in furtherance of." So
25 part of the distribution phrasing that adds breadth to what the

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1 government is suggesting is an act in furtherance of a sale.
2 That's different from saying a sale. So while I agree, and I
3 think the law would agree certainly that a sale, delivery,
4 transfer of narcotics would be a distribution, brokering may be
5 analytically within that ballpark. You'll tell me if the
6 Second Circuit has adopted that. An act in furtherance of
7 expands the breadth of that.

8 MR. TURNER: Your Honor, it's actually in Sand's as
9 well, activity in furtherance of the ultimate sale, such as
10 vouching for the quality of drugs, negotiating for it,
11 receiving a price, which is akin to brokering. So I'm very
12 confident there is support in the law. The language we
13 requested is tailored to the theory that we want to present.
14 If we have a theory that's supported in the case law, we are
15 entitled to an instruction along those lines. So we would like
16 to keep the existing language.

17 If your Honor would like for me to provide more
18 examples of the case law that we are relying on, I am happy to
19 do so but I am very confident that there is support.

20 THE COURT: All right. If you could find something
21 other than Sand's for activities in furtherance of, some act in
22 furtherance of, just because of the potential breadth of that
23 and because that does seem to be the main issue and I
24 understand why.

25 Now, in terms of page 37 --

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1 MR. TURNER: Your Honor, there is an edit on 35.

2 THE COURT: I'm sorry, 35? Did I miss that?

3 (Pause)

4 Oh, OK. Yes, you wanted to take out the particular
5 controlled substances. They are not necessary for the 841
6 charge.

7 Mr. Dratel, do you have a comment?

8 MR. DRATEL: I have no objection to that, your Honor,
9 but there is also one additional change that we had requested
10 on the same page, the next element, that it be knowingly and
11 intentionally.

12 THE COURT: I was actually going to get to that on
13 page 37. So that appears in several places. Now, the statute,
14 841 actually is written in terms of "or." 841(a) states:
15 "Except as authorized by this subchapter, it shall be unlawful
16 for any person knowingly or intentionally."

17 There are, it's true, certain cases, particularly
18 district court cases, where the "and" finds its way in there,
19 and I think, frankly, that is a misstatement of the law and it
20 should be "or."

21 But what were you basing your position on, Mr. Dratel,
22 and does the government have a view? Mr. Dratel.

23 MR. DRATEL: Well, that it is a specific intent
24 offense and that going back and looking at charges in other
25 narcotics cases that I have tried, they are all "and." It is

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1 all knowingly and intentionally.

2 THE COURT: I think that certainly intent is a
3 specific intent element as well as knowing. So the idea that
4 there is a particular kind of mens rea I think is captured by
5 either. Whether there is a difference between knowingly and
6 intentionally I think a lot of people would debate.

7 But why don't you see whether or not you folks can
8 find a Second Circuit case which looks at the difference in
9 particular between the statutory language of 841 and the
10 elements as described, in other words, notwithstanding, etc.,
11 etc.?

12 MR. DRATEL: I've seen it go the other way, where the
13 indictment charges as and -- not just this statute but other
14 statutes -- and then somehow it gets charged as an "or," but I
15 will go look for that, your Honor.

16 THE COURT: Yes. I would imagine if the indictment
17 charged it as an "and" and that was the charge in the
18 indictment, you could have a variance situation. I don't know
19 that there could be a case as to whether or not there is such a
20 thing.

21 Does the government have a view? Mr. Turner.

22 MR. DRATEL: Candidly, your Honor, I wouldn't care one
23 way or the other. We could prove knowingly and intentionally.
24 So I don't think it is a problem.

25 THE COURT: Let me just see whether or not -- I just

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1 want to make sure that we get a correct statement of the law,
2 but it is helpful to know the positions. That is also the
3 change on 37. So we'll revisit that as well.

4 And then 37 has an additional change as well, which is
5 the additional language "and distributed the narcotics
6 intentionally." I have not printed out whose changes these
7 except when there is comments in the area so I don't really
8 know whose -- I know that the metadata tells me but I haven't
9 looked to see in particular --

10 MR. TURNER: That is the defendant's change, your
11 Honor.

12 THE COURT: It is the defendant's?

13 MR. DRATEL: Yes. I'm sorry. Yes.

14 THE COURT: Does the government have a view?

15 MR. TURNER: We're fine with the change.

16 THE COURT: All right. Fine. So we'll revisit the
17 "or" at the top of that page, but otherwise we will accept the
18 additional language on page 37.

19 By the way, I've mentioned this to you before but just
20 so it's clear, I will be posting to docket all of the jury
21 instructions with your revisions as they came in to me at the
22 end of the case so there is a complete record as to precisely
23 who asked for what and it will be in electronic form as well on
24 ECF so that it can be -- the metadata can be accessed.

25 OK. We are on page 38, aiding and abetting. There

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1 was a typographical error I believe is the only changes on page
2 38.

3 MR. DRATEL: Yes, your Honor.

4 THE COURT: We are OK with this?

5 MR. TURNER: Yes, your Honor.

6 THE COURT: All right. Moving right along.

7 Page 39, the defendant has asked to maintain the
8 language that is the "to determine" language, and the
9 government has said that they find that it is cumulative and
10 unnecessary.

11 If the government does not have a substantive
12 objection to it and the defendant would like to keep it, I will
13 keep it.

14 MR. TURNER: No objection. Thank you.

15 THE COURT: All right. So we'll keep that.

16 Court change on page 41, "methamphetamine." Do the
17 parties agree that ecstasy and MDMA are shorthands for
18 methamphetamine?

19 MR. TURNER: I don't think it is -- yes, I don't think
20 it is the same drug, your Honor.

21 THE COURT: It is not, OK.

22 MR. TURNER: Because it is like crystal meth.

23 THE COURT: Crystal meth, OK. An uncaffeinated judge.

24 Can I put in -- what I am trying to do is put in
25 something that is more colloquial.

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1 MR. TURNER: We would have no objection to noting that
2 that would include substances commonly known as crystal meth
3 and maybe we can think of a few others.

4 THE COURT: Mr. Dratel?

5 MR. DRATEL: That's fine.

6 THE COURT: All right. OK. Now, this is where we
7 have a deletion suggested by -- it is page 41 -- the defendant
8 about whether or not the defendant is required to have
9 awareness of the types and quantities of drugs distributed.
10 The government had cited the U.S. v. King case in its original
11 instructions, which is where we picked this up. So that case,
12 which is a Second Circuit case 2003, states: "We find no basis
13 for disturbing the settled principle that drug dealers
14 convicted under Section 841(a) need not know the type and
15 quantity of drugs in their possession in order to be subject to
16 sentencing enhancements contained in 841(b). In so holding we
17 join all of the courts of appeal who have considered this
18 issue."

19 Mr. Dratel.

20 MR. DRATEL: That is no longer good law because of
21 Booker. And, also, that also doesn't affect the threshold
22 question of the elements of the offense. Sentencing
23 enhancements is a very different question than the elements of
24 the offense, and I think it is clear, from Thomas and all the
25 cases since then that I think we cited in our initial comments

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1 on the jury charge, that type and quantity are, have been
2 recognized as elements of the offense.

3 THE COURT: All right. Certainly for purposes of
4 minimums, they are at issue. The other place where it becomes
5 at issue is when, for instance, the statutory maximum can
6 change with respect to a particular charge. And the statutory
7 maximum can change -- for instance, there is a Second Circuit
8 case where there were a variety of drugs at issue, one of which
9 was marijuana, which carried a different statutory maximum
10 penalty than other drugs, there was a question as to whether or
11 not the Court should have at least mentioned the type of drugs
12 and if there was marijuana included, broken out the verdict
13 form in some manner.

14 Mr. Turner, do you have anything to add other than
15 what you have said in your prior -- the first submission the
16 government made?

17 MR. TURNER: No. I don't think Booker has anything to
18 do with it. To the extent --

19 THE COURT: I agree with Booker not having anything to
20 do with it.

21 MR. TURNER: To the extent that facts need to be
22 proven to the jury that affect the mandatory minimum here, the
23 only facts the statute require are that the violation involved
24 these weights. It doesn't say that the defendant knew that the
25 violation involved these weights. So I don't think Booker or

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1 all of those related cases affects the holding in U.S. v. King.

2 THE COURT: All right. And remind me, does the 841(b)
3 charge carry a statutory max of is it 40?

4 MR. TURNER: Life. (b)(1)(A) is life.

5 THE COURT: (b)(1)(A) is life. That's with certain
6 quantities proven?

7 MR. TURNER: Correct.

8 THE COURT: But in the absence of quantities proven --

9 MR. TURNER: It would be a (b)(1)(C).

10 THE COURT: It is a (b)(1)(C).

11 MR. TURNER: That section starts off --

12 THE COURT: Right.

13 MR. TURNER: -- "In the case of a violation of
14 Subsection (a) of this section involving" -- and then it lists
15 weights -- "the defendant should be sentenced to a term of
16 imprisonment not less than ten years," and it goes on to the
17 mandatory statutory maximum. So the only fact that needs be
18 proven to trigger those changes is does the violation involve
19 those drugs. Nothing about the defendant's knowledge.

20 MR. DRATEL: Well, if it is an element of the offense,
21 which it is, it would have to be knowing or intentional or
22 knowing and intentional. But whatever the instruction of that
23 particular scienter requirement is, it requires consciousness
24 by the defendant of an amount and a type. It just can't be
25 that he -- you know, the defendant can't just have one drug

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1 deal and then all of a sudden have a situation in which they
2 are now accountable for an amount of which they had no
3 knowledge or intent.

4 MR. TURNER: That's what the statute provides for,
5 your Honor. And if that were the case, it would obviously be
6 case law reporting it in these kinds of drugs cases where the
7 statutory maximum and minimums apply, and U.S. v. King remains
8 good law. It has not been reversed.

9 THE COURT: Here's what I'll do. Let me go back and
10 just reread the cases on this. I do believe that you can show
11 a drug -- narcotics distribution offense just by showing that
12 any narcotic has been distributed. The verdict form has to
13 have a special verdict form in terms of getting the (b)(1)(A)
14 quantities. I think that it is useful -- well, and so -- but
15 that's for the verdict form and not for the violation. But
16 we'll come back to this.

17 If anybody has anything else other than what you have
18 already given me or recited in today's session, let me know.
19 But I think it's pretty straightforward in terms of how the law
20 grapples with this issue.

21 I think we are waiting to find out from Joe if the
22 jury is here. If they are here we will start.

23 Page 44 -- actually, I'm sorry, page 42. This is the
24 inclusion of unanimity for the specific drug.

25 Joe, how are we doing? We're waiting on one? All

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1 right. That is pretty good with the subway conditions.

2 Who was the proponent of this change?

3 MR. DRATEL: Your Honor, I was.

4 THE COURT: All right.

5 MR. DRATEL: And it's basically that you can't
6 aggregate amounts from different jurors to get to any mandatory
7 minimum quantity. So, in other words, if three jurors think it
8 is more than a kilogram of heroin and another couple of jurors
9 think the amount is cocaine, that won't be sufficient. I think
10 that you can't have that kind of combination of votes on a jury
11 or get to a mandatory minimum.

12 THE COURT: Yes. And I think that the verdict form
13 would require unanimity on the answers to the interrogatories,
14 the special interrogatory, as to weight.

15 Mr. Turner, do you disagree?

16 MR. TURNER: I don't disagree with the sort of spirit
17 behind the change. I'm not sure that it comes across in the
18 language. As your Honor points out, it is already reflected in
19 the verdict form, which requires "yes" or "no" answers to
20 specific drug weights and quantities.

21 THE COURT: When you say you are not sure that the
22 spirit of it comes across, what do you mean? Do you object to
23 this language?

24 MR. TURNER: It already says: "Your determination
25 regarding drug type and quantity must be unanimous." And then

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1 it says "as to the specific drug." It is not clear what that
2 means beyond what has already been said, that drug type and
3 quantity, you have to be unanimous.

4 THE COURT: So you're basically saying it is redundant
5 and only includes half?

6 MR. TURNER: Right.

7 THE COURT: Because it would need to say you must be
8 unanimous as to the specific drug and quantity?

9 MR. TURNER: And which would be repetitive.

10 THE COURT: Which would be repetitive.

11 MR. TURNER: I think that the verdict form will take
12 care of the concerns.

13 THE COURT: I think we all agree on fundamental
14 principle, but there has to be unanimity as to the specific
15 type of drug and the specific -- whether the threshold on the
16 special verdict form has been met or exceeded, and then how
17 that gets conveyed I think will be some wordsmithing.

18 All right. Page 44, dispensing. The term "dispense"
19 is not relevant here. I don't know whose change that is. Do
20 you both agree?

21 MR. TURNER: I think we both agree.

22 MR. DRATEL: Yes, your Honor.

23 THE COURT: All right. Fine.

24 Knowingly or intentionally appears again on 46, and
25 we'll deal with that in a similar manner.

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1 Now, page 48, this is now in the conspiracy to violate
2 the narcotics laws. It has been my practice in the past to
3 preview that the conspiracy charge is separate and apart from a
4 substantive charge. I don't mind taking it out here because it
5 is dealt with later and the charge is already so long that
6 deletions of things for redundancy are all to the good, but I'm
7 curious if there is a substantive reason behind this.

8 MR. TURNER: Not really, your Honor. I thought it
9 just sort of broke up the charge here, and you get to it in the
10 next instruction. And, also, this isn't a case where there is
11 failure to complete the conspiracy at issue so I didn't think
12 that it was necessary to dwell on it.

13 THE COURT: Mr. Dratel.

14 MR. DRATEL: No problem.

15 THE COURT: All right. I will take that language out.

16 Page 49, the insertion of the word "general
17 instructions regarding conspiracy." I'm fine with that
18 language change. Anybody disagree?

19 MR. TURNER: No, your Honor.

20 MR. DRATEL: No.

21 THE COURT: All right. Now, the single conspiracy
22 versus multiple conspiracies and also whether or not -- well,
23 let's just start there.

24 I did read -- this is one of the topics dealt with in
25 the government's letter of today, and I pulled out and reread

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1 Sir Kue Chin and some of the other cases, the one that it
2 relies on, was it Romney? What is it called? Corey.

3 I don't disagree that in most cases -- and, in fact, I
4 don't know of a case where there has been a single defendant,
5 the failure to include a single versus multiple conspiracy
6 charge has been found to be error.

7 Mr. Dratel, I don't know if you have had a chance to
8 see that first part of the governments letter yet, or if you
9 want to respond at a different time.

10 MR. DRATEL: I think I will have to respond at a
11 different time. I didn't see it until I got here.

12 THE COURT: All right. And what I would need is if
13 you are going to continue to object, if there is any legal
14 basis in a single defendant case or whether analytically you
15 believe this case is sufficiently different that it merits a
16 difference here.

17 All right. That is, I think, really what was at issue
18 for 52 and 53.

19 I am still waiting to hear from Joe on this last
20 juror.

21 We get to the objects of the conspiracy, and there are
22 two changes on page 54. One is the inclusion of the language
23 "beyond a reasonable doubt" on at least one specific object. I
24 don't have any problem including that. It is a correct
25 statement of law. Anybody disagree?

Flsdulbl

Trial

1 MR. TURNER: I am fine with it, your Honor.

2 THE COURT: All right. And so it was a defense
3 change?

4 MR. TURNER: Yes.

5 THE COURT: All right, Mr. Dratel. So we'll take
6 that.

7 All right. The next one is the deletion -- and I take
8 it from the comment this is a deletion by the government -- I'm
9 sorry, by the defense -- of the language "or aid and abet such
10 activity."

11 Are we all set?

12 THE CLERK: Yes.

13 THE COURT: All right. We have been sitting for half
14 an hour. Do people need a break before we begin? OK. So
15 let's just take a short break. We let's get the witness -- we
16 are going to start with Mr. Miller.

17 MR. TURNER: Mr. Miller, yes.

18 THE COURT: Let's go ahead and get the witness on the
19 stand so we don't have to have any delays due to that. We will
20 start up in just three minutes, as soon as we can get ourselves
21 out and back.

22 THE CLERK: All rise.

23 (Recess)

24 THE COURT: All right. Let's bring out the jury.

25 We will continue with the jury instructions tomorrow

Flsdulbl

Trial

1 morning, if we have time.

2 (Continued on next page)

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Flsdulbl

Trial

1 THE CLERK: All rise as the jury enters.

2 (Jury present)

3 THE COURT: All right, ladies and gentlemen. Let's
4 all be seated.

5 And we've got here Mr. Miller on the witness stand.
6 Due to some scheduling issues, we are going to take a brief
7 segue -- a brief detour and hear some testimony from Mr. Miller
8 and then we will go back to Mr. Alford. So Mr. Alford's direct
9 testimony will continue but we're going to take Mr. Miller in
10 between.

11 All right? I hope you all made it through the storm
12 that kind of wasn't, kind of wasn't. All right. I had a lot
13 of pasta in my cabinet as a result of this.

14 All right. Let's go ahead and swear in this witness.

15 THE CLERK: Please raise your right hand.

16 ALEX MILLER,

17 called as a witness by the government,

18 having been duly sworn, testified as follows:

19 THE CLERK: Please state your full name for the
20 record.

21 THE WITNESS: Alex Miller.

22 THE CLERK: Thank you.

23 THE COURT: All right. Mr. Miller, please be seated,
24 sir. And it will be important for you to speak directly and
25 clearly into the mic. So adjust yourself how it is best for

Flsdulbl

Trial

1 you.

2 Mr. Turner, you may proceed.

3 MR. TURNER: Thank you.

4 DIRECT EXAMINATION

5 BY MR. TURNER:

6 Q. Good morning, Mr. Miller.

7 A. Good morning.

8 Q. Where do you work?

9 A. Stack Exchange.

10 Q. And what is Stack Exchange?

11 A. We're a network of Q and A websites broken up into
12 different groups.

13 Q. What are Q and A websites?

14 A. It is question and answer. So anyone on one of the topics
15 can go online and ask a question, get answers.

16 Q. Is one of the Q and A websites your company operates called
17 Stack Overflow?

18 A. Yes.

19 (Continued on next page)

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F1SGULB2

Miller - direct

1 BY MR. TURNER:

2 Q. And what is Stack Overflow about?

3 A. It's focused on computer programming.

4 Q. So what can people do there?

5 A. They can ask questions about anything directly related to
6 software development or computer programming and get answers
7 from the rest of the community or seek questions that have
8 already been asked.

9 Q. And can any Internet user post on Stack Overflow?

10 A. Yes.

11 Q. And anybody can answer those posts?

12 A. Yes.

13 Q. Can a user register an account on Stack Overflow?

14 A. Yes, they can.

15 Q. And in registering, what information are they required to
16 provide?

17 A. They provide an account name and email address and then a
18 password.

19 Q. And when you say account name, what do you mean?

20 A. A display name that is shown to identify them to the rest
21 of the community and whenever they ask or answer a question or
22 for their profile, to show what they have done on the site.

23 Q. Is that their screen name?

24 A. Yes.

25 Q. Does Stack Overflow maintain records of a user's

F1SGULB2

Miller - direct

1 registration information?

2 A. Yes.

3 Q. Are those records entered by hand or are they automatically
4 generated?

5 A. It's all automatically handled by the computer.

6 Q. At or near the time the registration information is
7 provided?

8 A. Yes, as it happens.

9 Q. And can a user change his registration information after
10 initially registering?

11 A. Yes. They can change any account information.

12 Q. And Stack Overflow keeps records of those changes?

13 A. Yes.

14 Q. Does Stack Overflow keep records of all the posts by that
15 user?

16 A. Yes.

17 Q. And responses to those posts?

18 A. Yes.

19 Q. Do you have access to those records?

20 A. Yes.

21 Q. Are you familiar with the records maintained by your
22 company?

23 A. Yes.

24 Q. Do you have a binder in front of you?

25 A. I do.

F1SGULB2

Miller - direct

1 Q. Can you take a look at what's been marked as GX or
2 Government Exhibit 1200.

3 A. Yes.

4 Q. Tell me if you recognize it.

5 A. I do.

6 Q. How do you recognize it?

7 A. It's a question from Stack Overflow.

8 Q. A question posted on Stack --

9 A. Sorry. A question that was posted on Stack Overflow.

10 Q. And what was the date of the post?

11 A. March 16, 2013.

12 Q. And the username?

13 A. Frosty.

14 MR. TURNER: Your Honor, the government offers Exhibit
15 1200 into evidence.

16 MR. DRATEL: Just hearsay, your Honor, and Vayner.

17 THE COURT: All right. That objection is overruled
18 and Government Exhibit 1200 is received.

19 (Government's Exhibit 1200 received in evidence)

20 MR. TURNER: Mr. Evert, can you zoom in this area
21 first.

22 Q. You said the date was?

23 A. Yes, the date is March 16, 2013.

24 Q. And this is the username?

25 A. Yes.

F1SGULB2

Miller - direct

1 MR. TURNER: Can you back up, Mr. Evert.

2 Q. And the title of the post, where is that shown?

3 A. Directly right -- right there.

4 MR. TURNER: Mr. Evert, maybe you can zoom in here.

5 So the title, before you do that, include the title.

6 The title is "How can I connect to a Tor hidden
7 service using curl in php." It says "I'm trying to connect to
8 a Tor hidden service using the following php," and there's a
9 bunch of computer code under that. Then it says "When I run it
10 I get the following error, couldn't resolve host name. However
11 when I run the following command from my command line in the
12 ubuntu," and there's more computer language, "I get a response
13 as expected, the php curl documentations says this," and
14 there's some more computer language, and then it says "I
15 believe the reason it works from the command line is because
16 Tor (the proxy) is resolving the dot onion host name, which it
17 recognizes. When running the php above, my guess is that curl
18 or php is trying to resolve the dot onion host name and doesn't
19 recognize it. I've searched for a way to tell curl/php to let
20 the proxy resolve the host name, but can't find a way."

21 Q. Based on Stack Exchange records, are you familiar with the
22 account information for the Stack Exchange user that made this
23 post?

24 A. Yes.

25 Q. You reviewed those account records?

F1SGULB2

Miller - direct

1 A. Yes.

2 Q. And when was the account originally registered?

3 A. I believe that was in March of 2012.

4 Q. About a year before this post?

5 A. Yes.

6 Q. Up to this point, how many posts had the user made?

7 A. One other post.

8 Q. After this post was put up on Stack Overflow, were any
9 changes made to the account information for the user?

10 A. Yes. The publicly displayed username was changed.

11 Q. And what was the account -- what was the account name or
12 display name originally associated to the account?

13 A. Ross Ulbricht.

14 Q. And what was it changed to after this post?

15 A. Frosty.

16 Q. And how soon after this post was made was that change made?

17 A. Less than a minute.

18 Q. Now, based on Stack Exchange records, do you know whether
19 any responses to this post were made by other users?

20 A. Yes.

21 Q. Were there?

22 A. Yes. He received -- the post received several answers.

23 Q. Could you take a look at Government Exhibit 1205.

24 A. Yes.

25 Q. Do you recognize this exhibit?

F1SGULB2

Miller - direct

1 A. I do.

2 Q. What is it?

3 A. It's one of the answers that the post received.

4 MR. TURNER: The government offers Exhibit 1205 into
5 evidence.

6 MR. DRATEL: The same objection, your Honor.

7 THE COURT: Government Exhibit 1205 is received. The
8 objection is overruled.

9 (Government's Exhibit 1205 received in evidence)

10 Q. So, somebody posted this. This is the username of the user
11 who posted it?

12 A. Yes.

13 Q. It says "Wanted to help until I checked the URL and found
14 out it is the hidden wiki. Sorry, I'm not helping that kind of
15 people."

16 And down below it says "Please don't jump to
17 conclusions. I only used that as an example. I've changed the
18 address to TorMail's hidden service."

19 Who posted that response there?

20 A. The response came from the original poster of the question.

21 Q. Frosty?

22 A. Yes.

23 Q. And after this -- it says here "I've changed the address to
24 TorMail's hidden service."

25 Was any change to the original post made around this

F1SGULB2

Miller - direct

1 time?

2 A. Yes.

3 Q. Take a look at Government Exhibit 1204.

4 A. Yes.

5 Q. Do you recognize this exhibit?

6 A. I do.

7 Q. What is it?

8 A. It's a revision history of the question showing the
9 original question and then a change that was made to it.

10 MR. TURNER: The government offers 1204 into evidence,
11 your Honor.

12 MR. DRATEL: Same objection.

13 THE COURT: Government Exhibit 1204 is received. The
14 objection is overruled.

15 (Government's Exhibit 1204 received in evidence)

16 MR. TURNER: Can you zoom in on this part, Mr. Evert.

17 Q. So the URL and the code provided by the user in the
18 original post was changed.

19 A. Yes.

20 MR. TURNER: Can you back out, Mr. Evert.

21 Q. And can you see from the exhibit when that change was made,
22 directing your attention to the top?

23 A. Yes. That was made on April 4th, 2013.

24 Q. And was any change to the account user information made
25 around this time?

F1SGULB2

Miller - direct

1 A. Yes.

2 Q. What change was that?

3 A. The email address on the account was changed.

4 Q. From what to what?

5 A. From, I believe, rossulbricht@gmail.com to
6 frosty@frosty.com.

7 Q. And how soon after this amendment to the post was made was
8 that change made to the registration?

9 A. Within a minute or two.

10 MR. TURNER: No further questions.

11 THE COURT: Mr. Dratel.

12 MR. DRATEL: Thank you.

13 CROSS-EXAMINATION

14 BY MR. DRATEL:

15 Q. Good morning, Mr. Miller.

16 A. Good morning.

17 Q. You just testified on direct about that March 16th post at
18 3:39, I think it's Exhibit 1200.

19 A. Yes.

20 Q. Right?

21 A. Yes.

22 Q. I want to go back about 20 minutes earlier in the timeline
23 and ask you a few questions about the process of logging on in
24 which you -- this user account logged onto the Stack Overflow.

25 A. Okay.

F1SGULB2

Miller - cross

1 Q. So, Stack Overflow accepted a method of logging on called
2 OpenID, is that correct?

3 A. That's correct.

4 Q. And OpenID is a system that essentially allows people to
5 log in to multiple websites without having to enter the
6 username and the password for each website, right?

7 A. Correct.

8 Q. And it works by establishing -- and establishing the person
9 operating a web browser is who they claim to be, right?

10 A. Yes.

11 Q. And we're talking about any web browser, whether it be
12 Internet Explorer, Mozilla, Firefox, Google, right?

13 A. Yes.

14 Q. Now, as vice-president of operations, right --

15 A. Correct.

16 Q. -- at Stack Exchange --

17 A. Yes.

18 Q. -- you're aware that there are security flaws with the
19 OpenID system, correct?

20 A. I'm not familiar with the technical details of them.

21 Q. Are you familiar with literature with respect to security
22 researches from Microsoft and computer scientists from the
23 University of Indiana at Bloomington about OpenID?

24 MR. TURNER: Objection; foundation, hearsay.

25 THE COURT: If the answer is "no," then it's

F1SGULB2

Miller - cross

1 straightforward. We'll take it one question at a time. I'll
2 allow this.

3 A. I am not, at least not having actually read it.

4 Q. Are you familiar with a term called covert redirect?

5 A. Yes.

6 Q. And that's when someone steals personal data from a user,
7 right?

8 A. Yes.

9 Q. And OpenID is something that can be vulnerable to covert
10 redirect, right?

11 A. My understanding is that it could.

12 Q. Also you said that all you really need to register is an
13 email address and a username, right?

14 A. Correct.

15 Q. So if I had your email, I could register as you and just
16 put a different username, right, with your email?

17 A. Yes.

18 Q. So all I have to do is know an email address for someone
19 else to sign onto Stack Overflow, use that email address with
20 whatever username I chose, right?

21 A. Yes.

22 Q. And there's no way from the records that we've seen or the
23 records that you have to determine who the actual person is who
24 is using that email account to register, correct?

25 A. No. We -- if I'm understanding your question correctly,

F1SGULB2

Miller - cross

1 all we do is basically look at the email account. We don't try
2 and look into who the actual person is.

3 Q. Right. So you wouldn't know from your records who is using
4 that email account to register on Stack Exchange or Stack
5 Overflow?

6 A. Correct.

7 Q. And there's nothing in your records that would help us
8 determine whether or not the use of the OpenID system to get
9 into that account was the subject of some covert redirect
10 attack, right?

11 A. Correct.

12 Q. Now, just looking at the sequence of events that you
13 testified to earlier, so the first thing that the person who
14 registered did was use the email rossulbricht@gmail.com, right?

15 A. The account was originally created using Facebook Connect,
16 so the email address would have been passed automatically by
17 Facebook as part of that authentication.

18 Q. But that's the email that was on the account?

19 A. That's the email that Facebook tells us who is on the
20 account and, therefore, the email that we added to the account.

21 THE COURT: What is Facebook Connect?

22 THE WITNESS: It's a service that allows a website
23 such as ours to allow someone to use a Facebook account to
24 establish their account on our website.

25 THE COURT: All right.

F1SGULB2

Miller - cross

1 THE WITNESS: It's their version of the OpenID.

2 Q. So it's a version of OpenID essentially?

3 A. Yes.

4 Q. And subject to the same vulnerabilities that we just talked
5 about with respect to OpenID?

6 A. I'm not familiar with the technical implementation details
7 on it, but in theory, yeah, I would suppose.

8 Q. And then 30 seconds later, the username changes to frosty,
9 correct?

10 A. No. The username frosty wasn't changed until the following
11 year.

12 Q. Following year?

13 A. Sorry. Can you repeat the question?

14 Q. Yes. On March 16, 2013, at 3:39:25 a.m. the user posted a
15 question "How can I connect to a Tor hidden service using curl
16 and php," correct?

17 A. Yes.

18 Q. And put specific lines of code in the message, correct?

19 A. Yes.

20 Q. And available essentially for the world to see, correct?

21 A. Correct.

22 Q. And you keep all of those records, right?

23 A. Yes. We make them --

24 Q. And even if someone changes their screen name or their
25 username, you would still have all the original records, right?

F1SGULB2

Miller - cross

1 A. Yes.

2 Q. And they would be available by subpoena, right?

3 A. Yes.

4 Q. But we have that first entry, March 16, and that's Exhibit
5 1200, right, 3:39:25 a.m.?

6 A. Yes.

7 Q. And that's UTC time, by the way?

8 A. That's correct.

9 Q. So, at approximately 30 seconds later March 16, 2013, the
10 user changes the screen name to frosty, right?

11 A. Yes.

12 Q. So thereby establishing without any question for anyone
13 subpoenaing those records that frosty and Ross Ulbricht are
14 connected, right?

15 MR. TURNER: Objection, form.

16 THE COURT: Sustained.

17 Q. So it doesn't change the fact that you still have all the
18 original records available by subpoena, right?

19 A. Correct.

20 Q. Kind of a blinking neon arrow, isn't it?

21 MR. TURNER: Objection.

22 THE COURT: Sustained.

23 MR. DRATEL: Nothing further, your Honor. Thank you.

24 THE COURT: Redirect?

25 MR. TURNER: Very briefly.

F1SGULB2

Miller - cross

1 THE COURT: All right.

2 REDIRECT EXAMINATION

3 BY MR. TURNER:

4 Q. You said when the account was originally registered, it was
5 registered using a Facebook account?

6 A. Yes.

7 Q. Would the user of that Facebook account had to have been
8 logged into his Facebook account in order to register with
9 Stack Overflow in that manner?

10 A. Yes.

11 MR. DRATEL: Objection; foundation.

12 THE COURT: Overruled.

13 Q. And just to make sure the timeline is clear, the account
14 was registered in March 2012, right?

15 A. Correct.

16 Q. And from 2012 until March 2013, the display name for this
17 user was Ross Ulbricht, correct?

18 A. Correct.

19 Q. And the registered email address was
20 rossulbricht@gmail.com, right?

21 A. Correct.

22 Q. Not until the post we saw in 2013 did that information
23 change, right?

24 A. Correct.

25 MR. TURNER: No further questions.

F1SGULB2

Miller - redirect

1 MR. DRATEL: Just a couple, your Honor.

2 RECROSS EXAMINATION

3 BY MR. DRATEL:

4 Q. Now, you don't know how the person logged in, though, to
5 make that post, correct?

6 A. In -- sorry. In which case?

7 Q. In 2013? In other words, to log into Stack Overflow in
8 2013, they used the OpenID system?

9 A. Correct. They used the OpenID through Google.

10 Q. Right. So it didn't necessarily have to come through a
11 Facebook account?

12 A. No. In this case, if I'm understanding your question
13 correctly, we key -- we do what's called keying on the email
14 address. So any OpenID-type system that you use if it returns
15 the same email address because that trusted third party
16 trusts -- says that that is the email address of this person,
17 we trust that it is the email address of the user at the time.

18 Q. Right. So in March of 2013 when that post was made, I
19 could have typed in "rossulbricht@gmail.com" and had the
20 right -- and that would be it, right? I would be in there?

21 A. Google would have to tell us that the person on the
22 computer -- if you were to do that, we would be trusting Google
23 to tell us that you had control over that Gmail address at that
24 time.

25 Q. But that's what essentially the OpenID system does, right?

F1SGULB2

Miller - recross

1 A. Yes.

2 Q. With respect to the register of an account that you say is
3 on Facebook, but obviously you don't know who is on the
4 Facebook account when they're registering, right?

5 A. Correct, correct.

6 MR. DRATEL: Can I have one moment, your Honor.

7 THE COURT: Yes.

8 MR. DRATEL: Nothing further. Thank you.

9 THE COURT: Thank you, Mr. Miller. You may step down,
10 sir.

11 (Witness excused)

12 THE COURT: Let's get Mr. Alford back on the stand.

13 Mr. Alford, you're reminded that you remain under oath
14 from our prior session.

15 THE WITNESS: Thank you.

16 GARY ALFORD, resumed.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. TURNER:

19 Q. Agent Alford, when we last left off, we were going through
20 documents from the defendant's laptop and you were explaining
21 some of the links you found with evidence in the defendant's
22 Gmail account. Do you remember that?

23 A. Yes, I do, Facebook account.

24 Q. Facebook account. And we left off with an April 2012 entry
25 in the SR accounting spreadsheet for a laptop that you saw

F1SGULB2

Alford - direct

1 corresponding receipt for in the defendant's Gmail account. Do
2 you remember that?

3 A. Yes.

4 Q. Let me keep going chronologically through that evidence
5 with you and look at Government Exhibit 226E, which has already
6 been admitted into evidence. Pull up the first part of the
7 chat.

8 Here we're at pages 507-08 of the chat log with vj and
9 it's dated March 9, 2012. It starts out:

10 "Myself: I've been researching offshore stuff

11 Myself: well, I think I have my
12 citizenship/banking/living plan worked out, but I am feeling
13 around for advisors to make sure I'm not missing anythign

14 Vj: Make sure your plan includes at least two backup
15 locales

16 Myself: ok, don't have that but will work it in."

17 Can you go down to the next part. March 26, 2012:

18 "Vj: One of the things I've learned in the last 10
19 days, how to run several offshore corps/trusts, and safely
20 transfer funds tween them.

21 Vj: It's as simple as going to the cayman islands,
22 taking out a cashiers cheque, or cash, and walking it down the
23 street, and depositing it in a trust account.

24 Myself: great. My top priority right now is getting a
25 new citizenship.

F1SGULB2

Alford - direct

1 Myself: you aren't looking into that much are you?

2 Vj: interbank transfers always leave some trace.

3 Vj: Dominican Republic, 24 months, 10 grand gets you a
4 citizenship. Bahamas, 4 months, 280grand.

5 Myself: dominica 60k 2 months or so

6 Myself: didn't know about the bahamas, will look into
7 that.

8 Vj: Dominca kinda worries me, from what I've seen of
9 the process, I'm not sure it's all kosher."

10 Next page.

11 "vj: But remember, you can never have too many
12 passports.

13 Myself: yea, but I need to get rid of one first if you
14 know what I mean. THEN the more the merrier"

15 Keep going.

16 "Myself: the citizenship I am applying for requires a
17 personal financial audit going back years

18 Vj: Look for other ones as well. You can never have
19 too many passports.

20 Myself: I will for sure. it's my new hobby."

21 Emoticon.

22 "Myself: but this is the fastest one I can get."

23 May 3, 2012 it starts out "myself: sorry, I got
24 distracted reading about what a terrible idea it is to renounce
25 my citizenship.

F1SGULB2

Alford - direct

1 Vj: one word - taxes

2 Vj: Is there a terrible downside to renouncing your
3 citizenship?

4 Vj: can't be president

5 Vj: can't be vice-president

6 Vj: erm... anything else?

7 Myself: it is much harder to get back in the country
8 and you can't stay as long

9 Myself: I grew up here, I have an emotional attachment

10 Myself: my family is here

11 Vj: I used to feel that way. Now, I fly my family to a
12 nice place twice a year to meet.

13 Myself: wah wah boo hoo

14 Vj: they much prefer that to me visiting

15 Vj: naw, it's a valid point.

16 Vj: Having money eases the transition greatly

17 Myself: I'm sure it'll be fine. Have you looked at the
18 few tax havens in the world?

19 Myself: where you can live permanently w/o income tax

20 Myself: monte carlo, andorra

21 Vj: Yeah, my clever plan is to travel all the time, be
22 vague about permanent residence.

23 Myself: could get tiresome

24 Vj: and pick up some land in interesting places.

25 Myself: it brings up tough questions

F1SGULB2

Alford - direct

1 Myself: like if I want kids

2 Vj: But being DPR and having a family are mutually
3 exclusive, at least for a few years.

4 Myself: I'm ok with that

5 Vj: That said, rich playboy types can have a lot of
6 fun.

7 Myself: im ok with that too, but I do want a family
8 someday.

9 Vj: That's where careful creation and nurturing of a
10 public personae, business, etc., becomes so important.

11 Vj: So you can slip into it seamlessly when you want.

12 Myself: I'm not complaining about any of this, great
13 fucking problem to have.

14 Vj: heh, it is, isn't it!

15 Vj: also, we can buy citizenships/work/living visa's,
16 etc., no problem

17 Vj: cause it never hurts to have an extra country to
18 live in.

19 Vj: I plan on collecting passports like Pokemon's.
20 Gotta get 'em all!

21 Myself: well, that's what I'm getting into atm. I need
22 a different passport when I renounce

23 Myself: you could really screw yourself if you didn't
24 line something up. oops, renounced my citizenship, now I'm
25 stuck here."

F1SGULB2

Alford - direct

1 Q. In the defendant's Gmail account, did you find any evidence
2 about seeking foreign citizenship?

3 A. Yes, I did.

4 Q. What did you find?

5 A. I found emails from the defendant to various friends asking
6 for, how do you say, when someone says -- like a reference for
7 citizenship.

8 Q. And where specifically? Citizenship where?

9 A. Dominica.

10 Q. Can you take a look at Government Exhibit 316.

11 MR. TURNER: Mr. Evert, could you pop up that last
12 page of the chat?

13 Q. Do you recognize Government Exhibit 316?

14 A. Yes.

15 MR. TURNER: Mr. Evert, can you zoom in on the last.

16 Q. All right. So what's Government Exhibit 316?

17 A. It is three emails: One from Ross Ulbricht to an
18 individual named Alden on May 1 2012; there's a second email
19 from the defendant to an individual named Mirza also on May 1,
20 2012; and there's a third email on that same date from the
21 defendant to an individual named Rene.

22 MR. TURNER: Your Honor, the government offers 316
23 into evidence.

24 MR. DRATEL: Just the same objection.

25 THE COURT: All right. Those objections are

F1SGULB2

Alford - direct

1 overruled. Government Exhibit 316 is received.

2 (Government's Exhibit 316 received in evidence)

3 Q. The date of the email is May 1, 2012. How does that
4 compare to the last chat we saw up on the screen?

5 A. It's within two days.

6 Q. And subject is "reference letter." It says "Hey Alden,
7 Ever do a patent search on that dog collar idea? Could be a
8 winner! I'm applying for a second citizenship to an island
9 nation in the caribbean called Dominica and they need a few
10 non-family character references. There are few people that have
11 known me as long as you have. Would you be willing to one of
12 them for me? All you would need to do is write a half page
13 testifying to my outstanding character, should be easy."
14 Emoticon. "You may wonder why I am doing this crazy thing.
15 Well, it's part of a plan of mine to diversify myself
16 internationally. There are opportunitites available to people
17 with non-us citizenship, such as ETF trading, and there could
18 also be substantial tax advantages in the future. It's also a
19 bit of a political hedge if things ever get dicey here in the
20 US."

21 Q. Are the other two letters in this email, collection of
22 emails -- excuse me -- are the other two emails in this exhibit
23 of a similar nature?

24 A. Yes.

25 Q. And they're from the same date?

F1SGULB2

Alford - direct

1 A. Yes.

2 Q. Okay. Let me go on to Government Exhibit 251. The jury
3 has already seen this exhibit. It's a spreadsheet from the
4 defendant's computer entitled "networth calculator."

5 MR. TURNER: And can you zoom in on the first column,
6 Mr. Evert. So the entries in the spreadsheet, go down to
7 June 2012.

8 Q. Do you see that?

9 A. Yes.

10 MR. TURNER: Back out. Could you zoom in on this area
11 here.

12 Q. So under hard assets, there's SR Inc. listed as
13 \$104 million in value and then there's a Samsung 700Z laptop
14 listed for \$800. Earlier we saw a laptop purchased for \$1,150
15 in April?

16 A. Yes.

17 Q. There may have been some depreciation value?

18 MR. DRATEL: Objection.

19 THE COURT: Sustained.

20 Q. So looking at the right-hand column, under liquid assets
21 inventory, there's an entry for USAA \$1,400. In the course of
22 your investigation, did you obtain any records from USAA?

23 A. Yes, I did.

24 Q. And from whom -- for whom -- who are they for?

25 A. The defendant.

F1SGULB2

Alford - direct

1 Q. Could you take a look at Government Exhibit I think it's
2 806.

3 A. I had a spreadsheet in this book.

4 Q. 806, do you have 806 in your book?

5 A. Yes, I do.

6 Q. Okay. Do you recognize that document?

7 A. Yes, I do.

8 Q. How do you recognize it?

9 A. It's a bank statement from USAA Federal Savings Bank which
10 was subpoenaed through the investigation.

11 MR. TURNER: The government offers 806 into evidence.
12 We have a stipulation we can read in, your Honor.

13 THE COURT: All right.

14 MR. TURNER: We can read in the stipulations at the
15 end of the testimony, if that's okay.

16 THE COURT: All right.

17 MR. TURNER: Apologies for that. The government
18 offers 806 into evidence.

19 THE COURT: Mr. Dratel.

20 MR. DRATEL: Okay.

21 MR. TURNER: Subject to stipulation.

22 THE COURT: Okay. Subject to the stipulation,
23 Government Exhibit 806 is received.

24 (Government's Exhibit 806 received in evidence)

25 Q. Now, we saw the last entry for the spreadsheet was in

F1SGULB2

Alford - direct

1 June 2012. And what was the balance in the defendant's USAA
2 account as of June 2012? Mr. Evert, can you blow that up?

3 A. It is \$1,347.24.

4 Q. How does that compare to the entry in the spreadsheet?

5 A. It's within \$60 of that entry.

6 Q. There's also a line in here for PayPal, \$50. Did you
7 obtain any PayPal records in the course of your investigation?

8 A. I obtained PayPal records relative to the defendant.

9 Q. Can you take a look at Exhibit 808.

10 A. I have it.

11 Q. Do you recognize this document?

12 A. Yes.

13 Q. What is it?

14 A. It is the document from PayPal relative to the transactions
15 of the defendant.

16 MR. TURNER: Your Honor, we have a stipulation on this
17 and we can read it in after the defendant's (sic) testimony.

18 THE COURT: All right.

19 MR. TURNER: So the government offers 808 into
20 evidence. Excuse me, it's the witness' testimony.

21 THE COURT: Any objection?

22 MR. DRATEL: No.

23 THE COURT: Government Exhibit 808 is received.

24 (Government's Exhibit 808 received in evidence)

25 Q. So what do the records from PayPal show was the balance in

F1SGULB2

Alford - direct

1 the account? And look up here so we can see what these columns
2 are. Over here, can you zoom in. From the side, there's a
3 date in this column and then zoom out, please, and then over
4 here, and then there's a balance remaining after the
5 transaction in each column in each row?

6 A. Yes.

7 Q. So, could we go down to the bottom, please, the bottom two.
8 Zoom in here first. That's good.

9 June 7, 2012, there's a transaction involving a
10 checkout payment system, and then if you go to the other side
11 in the balance column, second from the right, what was the
12 balance as of June 7, 2012 in the account?

13 A. \$46.89.

14 Q. How does that compare to the entry in the spreadsheet?

15 A. It's within \$4 of the entry on the spreadsheet.

16 MR. TURNER: Let me now move to September 2012. Put
17 up Government Exhibit 227F on the screen. Blow this up,
18 please. This is page 63 of a 337-page chat with Cimon, and
19 it's from 9/26/2012.

20 "Cimon: Hey, it's 0700 here, and here I am!!!

21 OK, it's 715

22 Yeah, it's 0730, and we must have got our wires
23 crossed. I'm going to go grab some breakfast, back in a bit

24 Gotta assume ya' forgot our meet, I'm gonna go for my
25 morning walk, will check back later back, will be here for

F1SGULB2

Alford - direct

1 another 2 hours or so, then I have a local meeting for lunch.
2 It's noon, and I'm off for a lunch meeting, will check back
3 later in the day."

4 Then it says "Myself: hey, sorry about that. I changed
5 timezones today and I think I got confused last night with my
6 flight schedule

7 Myself: it's actually getting late here, so I'll go to
8 sleep soon. I should be around during your morning tomorrow,
9 but the next 2-3 days after I'll be fairly busy. If you don't
10 find me on here but have something to say, feel free to message
11 me on Silk Road, or the dev forum

12 Myself: had a good chat with smed, don't worry about
13 getting me up to speed on the current state of things. He says
14 he'll have a demo of the exchange deployed on tuesday, so let's
15 all touch base then. I'll be posting a couple of things on the
16 dev forums tomorrow that you should look at when you get a
17 chance as well."

18 Q. All right. So the chat -- in the chat "myself" says "I
19 changed timezones today."

20 Did you see any records in the defendant's Gmail
21 account from this date indicating that the defendant was
22 traveling?

23 A. Yes, I did.

24 Q. What did you see?

25 A. I saw an email regarding flight records.

F1SGULB2

Alford - direct

1 Q. Can you take a look at Government Exhibit 320.

2 A. I had a spreadsheet in this book that's not here today.

3 Q. Okay. We won't use it for now, but do you see 320 in front
4 of you?

5 A. Yes.

6 Q. And do you recognize it? What is it?

7 A. It's an email from priceline.com to the defendant about
8 flights.

9 MR. TURNER: The government offers Exhibit 320 into
10 evidence, your Honor.

11 MR. DRATEL: One moment, your Honor, please. Vayner
12 and hearsay, your Honor.

13 THE COURT: All right. Those objections are
14 overruled.

15 Government Exhibit 320 is received.

16 (Government's Exhibit 320 received in evidence)

17 Q. First, let's focus on the header information. The date is
18 9/3/2012 from priceline.com to rossulbricht@gmail.com,
19 itinerary for Austin, Texas, September 26, 2012.

20 Can you take a scroll down to the flights. What are
21 the flights here?

22 A. Okay. There's a departing flight and it's from San
23 Francisco to Austin, Texas.

24 Q. On what date?

25 A. It's leaving on Wednesday, September 26, 2012.

F1SGULB2

Alford - direct

1 Q. And are you aware whether San Francisco is in a different
2 timezone from Austin, Texas?

3 A. Yes, it is. It's in the Pacific Standard Time and Austin
4 is in I believe the Central Standard Time.

5 Q. Okay. Let me move on to November 2012. Could you pull up
6 227G, please.

7 MR. TURNER: Can you scroll up a little bit.

8 Q. This is page 157 of a 337-page chat with Cimon. It starts
9 out November 15, 2012, "Myself: just got this

10 Myself: I'm not sure if tormail is not receiving
11 emails atm, but funds are coming in.

12 I was able to exploit a vulnerability in one of the
13 pages on silk road in a way that will cause a DOS attack and
14 SQLi attack.

15 Send 5k to..." then there's a long string "if you are
16 satisfied with WHAT I am doing. Send 15k to the same address to
17 know HOW I am doing it.

18 -JE

19 Myself: had to swallow my pride there

20 Cimon: I know, but fuck it, let's keep our eye on the
21 ball, and the ball is keeping the site open

22 Cimon: heh, yer still way richer than he!" Emoticon.

23 "Myself: can't wait to put this behind me."

24 Can we go back to GX 250, please. Could we go to page
25 seven, middle of the page, the SR accounting spreadsheet the

F1SGULB2

Alford - direct

1 jury has seen earlier, and there's an entry here, 11/18/2012,
2 "pay off hacker."

3 See that?

4 A. Yes.

5 MR. TURNER: Go back to 227G, please. I'm sorry.
6 227G. You can get rid of the top panel. Okay. "Myself: can't
7 wait to put this behind me

8 Cimon: Has this fucked up your travel plans

9 Cimon: And have you slept recently

10 Myself: just stressed me out

11 Myself: I am rested

12 Myself: and I am done travelling

13 Myself: for a little while anyway."

14 Q. Can you take a look at Government Exhibit 321. Do you
15 recognize this exhibit?

16 A. Yes, I do.

17 Q. What is it?

18 A. It is an email from Delta Airlines to the defendant on
19 November 13, 2012 regarding a flight itinerary.

20 Q. And whose flight itinerary?

21 A. The defendant.

22 MR. TURNER: The government offers Exhibit 321 into
23 evidence, your Honor.

24 MR. DRATEL: Vayner and hearsay.

25 THE COURT: All right. The objections are overruled.

F1SGULB2

Alford - direct

1 GX 321 is received.

2 (Government's Exhibit 321 received in evidence)

3 MR. TURNER: Can you zoom in on the header again.
4 From Delta Airlines to Ross Ulbricht subject, "It's time to
5 check-in." The date is 11/13/2012.

6 And then could you zoom in to the last half of the
7 message, just the first three trips there.

8 Q. So what are the flights indicated in the message?

9 A. There's a trip one and it is departing on Wednesday,
10 November 14, 2012, it's departing San Francisco, California and
11 it's arriving at Atlanta, Georgia.

12 There's a second leg, which leaves on that same day,
13 which departs 7:37 p.m. from Atlanta, Georgia to San Juan.

14 And then there's a third leg on the next day,
15 Thursday, November 15, which departs San Juan and arrives in
16 Dominica.

17 And then there's a second trip, which is dated for
18 Tuesday, December 4th, which departs Dominica and arrives in
19 San Juan. The day after on Wednesday December 5, it
20 departs -- the flight departs from San Juan and arrives in
21 Atlanta, Georgia. And on that same day, another leg from
22 Atlanta, Georgia, to San Francisco, California.

23 Q. So let me go on to February 2013, can we take a look at
24 what's marked in your binder as 227I.

25 A. Yes.

F1SGULB2

Alford - direct

1 Q. Do you recognize this exhibit?

2 A. 227I? Yes.

3 Q. How do you recognize it?

4 A. 227I is a Tor chat.

5 Q. Is this one of the Tor chats you reviewed from the
6 defendant's computer?

7 A. Yes.

8 MR. TURNER: The government offers 227I into evidence.

9 MR. DRATEL: Vayner and hearsay, your Honor.

10 THE COURT: 227I is received.

11 (Government's Exhibit 227I received in evidence)

12 MR. TURNER: Can you publish that, Mr. Evert. This is
13 page 308-10 of a 337-page chat log with Cimon dated February 5,
14 2013, and it starts off "Cimon: I will tell you I've been
15 boning up on both Tor and bitcoind source code and I've had the
16 Tor thing figured for a while, just the bootstrapping step I'm
17 having problems with and I'll be back home on Friday to work
18 with smed, he's further along on quite a few things than it
19 appears, eh.

20 Myself: Okay. I'll be away sat/sun, so maybe we can
21 catch up next Monday.

22 Cimon: Take care.

23 Myself: You too."

24 February 10.

25 "Cimon: Hey, how was your weekend.

F1SGULB2

Alford - direct

1 Myself: One of the best I've had in a while. How was
2 yours."

3 You looked to see in the defendant's Facebook account
4 any records from around this time period?

5 A. Yes, I did.

6 Q. And what did you find?

7 A. I found a Facebook status update which corresponds with
8 this time frame.

9 Q. Did you find any Facebook messages as well?

10 A. Yes.

11 Q. Can you take a look at Government Exhibit 331. What are
12 you looking at there?

13 A. It is records from the defendant's Facebook account and it
14 is messages to and from the defendant.

15 MR. TURNER: The government offers Exhibit 331 into
16 evidence.

17 MR. DRATEL: The same objection.

18 THE COURT: All right. That objection is overruled.
19 Government Exhibit 331 is received.

20 (Government's Exhibit 331 received in evidence)

21 MR. TURNER: Can you zoom into here.

22 Q. And the date of this message is February 8, 2013?

23 A. Correct.

24 Q. And could you explain what the messages say?

25 A. The ones you have highlighted, February 8, 2013 it says

F1SGULB2

Alford - direct

1 "Going camping this weekend," and the author is the defendant
2 and his recipient is an individual named Allison.

3 Q. Okay. And then the messages under that are an exchange
4 following that message?

5 A. Yes, it is. Yes, they are. Excuse me.

6 Q. Now, let me show you Government Exhibit 241, jumping to
7 May 2013.

8 A. I have it.

9 MR. TURNER: Could you go to page three of the
10 document. It's a file that was recovered from the defendant's
11 laptop that's already been shown to the jury named log.txt.
12 And zoom in on actually 4/21. That's fine. Down at the
13 bottom. Okay. The first entry up at the top of the screen,
14 4/21 to 4/30/2013, it says "Market and forums under sever DoS
15 attack. Gave 10k btc ransom but attack continued. Gave smed
16 server access."

17 Then on 5/3/2013, "Helping smed fight off attacker,
18 site is mostly down. I'm sick."

19 5/6/2013, "Working with smed to put up more defenses
20 against attack."

21 Did you find any emails in the defendant's Gmail
22 account referencing a smed?

23 A. Yes, I did.

24 Q. What did you find?

25 A. I found an email in May of 2013 from the defendant to an

F1SGULB2

Alford - direct

1 individual with a screen capture contained in it.

2 Q. Let's take a look at that, can you take a look at
3 Government Exhibit 312, please.

4 A. Which exhibit?

5 Q. 312.

6 A. Yes, but this is not the exhibit.

7 Q. 317. Sorry.

8 A. Yes, I have it.

9 Q. Okay. Is this the email you're referring to?

10 A. Yes.

11 MR. TURNER: The government offers Exhibit 317 into
12 evidence.

13 MR. DRATEL: Same objection; Vayner and hearsay, your
14 Honor.

15 THE COURT: All right. Government Exhibit 317 is
16 received. Those objections are overruled.

17 (Government's Exhibit 317 received in evidence)

18 MR. TURNER: Let's take a look at the message itself
19 first. Blow that up.

20 Q. The subject is IMG from Ross Ulbricht, dated May 2, 2013,
21 and then it's to someone named Curtis. Was there any body in
22 the message?

23 A. No.

24 Q. And then it says attachment screenshot from 2013,
25 May first, and a timestamp there.

F1SGULB2

Alford - direct

1 A. That's correct.

2 Q. Is page two the attachment?

3 A. Yes, it is.

4 Q. Let's take a look at that. All right. Are you familiar
5 with the print screen feature in a computer?

6 A. Yes, I am.

7 Q. Did you ever personally use that feature before?

8 A. Yes, I have.

9 Q. Have you ever used it in a computer attached to two
10 computer monitors?

11 A. Yes. That's my setup at work.

12 Q. And what's happened when you used the print screen feature
13 on your computer with two monitors hooked up to it?

14 A. I get a result similar to this where you have both screens
15 on the image that is produced.

16 MR. TURNER: So let's zoom in on the top corner of the
17 right-hand image. So the username frosty is there, the date,
18 May 1, 10:31 p.m. Can you back out, please. Do the same thing
19 for this image.

20 Q. The same thing, right?

21 A. Yes, it is.

22 MR. TURNER: Could you zoom into the bottom-left
23 corner of the left-hand image, right here.

24 Q. The PDF link here named hidden server.PDF. Do you see
25 that?

F1SGULB2

Alford - direct

1 A. Yes.

2 Q. Now, let's zoom into the window in the middle of the
3 screen. What do you see?

4 A. That is a Pidgin instant messenger box with the box open
5 and a discussion with an individual named smed and mg in the
6 background.

7 Q. Okay. So the open window has the tab labeled "smed"?

8 A. Yes.

9 Q. It says "private conversation with smed...started," and
10 then there's a long string of text starting:

11 "Smed: Morning.

12 Me: Hey, good morning."

13 And then there's a tab here labeled "mg," is that
14 right?

15 A. Yes, it is.

16 Q. Go back to Government Exhibit 241. Go to the top of page
17 two. Do you see a reference to mg in here?

18 A. Yes, in the April 3, 2013 entry.

19 Q. "got pidgin chat working with inigo and mg"?

20 A. Correct.

21 Q. And just to be clear, the date of that email, 317, what was
22 it again?

23 A. The email with the screenshot was dated May 2, 2013.

24 MR. TURNER: Mr. Evert, can you back out of that.

25 Q. And the date of the entries we saw before with smed are

F1SGULB2

Alford - direct

1 what?

2 A. It is within a couple days prior. And it was within one
3 entry, the day after; and the other entry, approximately five
4 days after.

5 Q. Let's take a look at Government Exhibit 264. This is a
6 spreadsheet the jury has already seen from the defendant's
7 computer labeled servers.ods.

8 MR. TURNER: Can you zoom into the columns, please, up
9 at the top. That's good.

10 Q. Specifically to this one, is there one column in the
11 spreadsheet labeled IP address?

12 A. Yes, there is a column.

13 MR. TURNER: Back out, please, and then could you go
14 here.

15 Q. And one column labeled "notes"?

16 A. Yes.

17 MR. TURNER: Can you back out. Can you zoom in down
18 here. Can you highlight this entry right here to here.

19 Q. See this entry on the spreadsheet?

20 A. Yes.

21 Q. There's an IP address, 64.31.48.51, and then the notes are
22 "Connected to my real ID maxmind Ubuntu 12.10."

23 Did you receive any records from Google indicating the
24 IP addresses used by the defendant to log into his Gmail
25 account?

F1SGULB2

Alford - direct

1 A. I did.

2 Q. Can you take a look at Government Exhibit 809. I'm sorry.
3 Government Exhibit 333A. Sorry about that.

4 A. 333A?

5 Q. Yes.

6 MR. TURNER: Your Honor, I have a stipulation to read,
7 a paragraph from the stipulation that's been marked as
8 Government Exhibit 803.

9 THE COURT: All right.

10 MR. TURNER: "Government Exhibit 333A is a true and
11 accurate copy of subscriber information associated with the
12 email account rossulbricht@gmail.com. These records were
13 produced by Google to Agent Alford pursuant to subpoena on or
14 about July 17, 2013. Among other things, Government
15 Exhibit 333A contains a chart reflecting user logins to the
16 email account rossulbricht@gmail.com between January 13, 2013
17 and June 20, 2013. The chart indicates the date and time of
18 each login, as well as the Internet protocol IP address of the
19 user logging into the account. These records were
20 automatically generated from Google's computer systems at or
21 near the time the logins occurred."

22 Your Honor, the government offers 333A into evidence.

23 MR. DRATEL: No objection, your Honor.

24 THE COURT: Received.

25 (Government's Exhibit 333A received in evidence)

F1SGULB2

Alford - direct

1 MR. TURNER: Mr. Evert, can you log into this part
2 here.

3 Q. So, do you see the IP address 64.31.48.51 anywhere in the
4 logins of the defendant's Gmail account?

5 A. I do.

6 Q. Where are they?

7 A. They are in -- under the column "IP addresses" and
8 64.31.48.51 appears starting June 17th, 2013 and it
9 continues -- it continues to be listed as the documents until
10 June 20, 2013 in this sheet.

11 MR. TURNER: Let me fast-forward to September 2013.
12 Can you pull up Government Exhibit 241, please, Mr. Evert.
13 This is the log.txt file we have seen before. Can you go down
14 to the page five and highlight this one right here.

15 Q. So this entry is dated 9/11 to 9/18/2013, "Could not
16 confirm ST bust. Got covered in poison oak trying to get a
17 piece of trash out of a tree in a park nearby and have been
18 moping. Went on a first date with amelia from okc."

19 Do you see any messages in the defendant's Gmail
20 account about poison oak?

21 A. Yes, I did.

22 (Continued on next page)

23

24

25

Flsdulb3

Alford - direct

1 Q. Take a look at Government Exhibit 325.

2 A. I have it.

3 Q. What is that?

4 A. It is an email from the defendant to an individual named
5 Julio in which he references that he has poison oak rash from
6 head to toe.

7 MR. TURNER: Your Honor, the government offers 325
8 into evidence.

9 MR. DRATEL: Objection. Vayner and hearsay, your
10 Honor.

11 THE COURT: The objection is overruled. GX325 is
12 received.

13 (Government's Exhibit 325 received in evidence)

14 THE COURT: At 11:30 we will take a break. Is that
15 all right with everybody?

16 MR. TURNER: OK, your Honor.

17 THE COURT: Thanks.

18 MR. TURNER: Could you zoom in, please, great.

19 Q. The date of the email is 9/19/2013?

20 A. Yes.

21 Q. "I have poison oak rash from head to toe. I wish you were
22 here to comfort me."

23 A. Correct.

24 Q. How about "first date with Amelia from OKC," did you find
25 anything in the defendant's Gmail account about that?

Flsdulb3

Alford - direct

1 A. Yes. I found an e-mail related to an okcupid! related to
2 Amelia.

3 Q. Take a look at Government Exhibit 324.

4 A. Yes.

5 Q. Is that the email you are referring to?

6 A. Yes. It is an email from okcupid! to the defendant.

7 MR. TURNER: The government offers Government Exhibit
8 325 into evidence.

9 MR. DRATEL: Objection as to Vayner and hearsay, your
10 Honor.

11 THE COURT: You mean 324?

12 MR. TURNER: I'm sorry. 324.

13 THE COURT: Mr. Dratel, was that the exhibit you were
14 referring to?

15 MR. DRATEL: Yes.

16 THE COURT: The objections are overruled. Government
17 Exhibit 324 is received.

18 (Government's Exhibit 324 received in evidence)

19 BY MR. TURNER:

20 Q. How many emails are included in this exhibit?

21 A. Two.

22 MR. TURNER: Can you zoom in on the header, please,
23 Mr. Evert.

24 The date is 9/18/2013.

25 "From: Okcupid!

Flsdulb3

Alford - direct

1 "To: Ross Ulbricht at Gmail.com.

2 "Subject: Ross-0, You have a new message from
3 amaliham."

4 Could you go down, please.

5 Amaliham says: "Be there in a few. I'm wearing a
6 khaki jacket and white shirt."

7 A. Correct.

8 Q. What does the next message say?

9 A. The next message says "Nice meeting you," and a phone
10 number is reflected.

11 Q. Take a look at Government Exhibit 130. It has already been
12 admitted into evidence as the notes recovered from the
13 defendant's trashcan in his bedroom.

14 Could you zoom in here, Mr. Evert.

15 The phone number written on the piece of paper
16 "Danielle," the area code has been redacted, and it says
17 "5791503." Did you receive any records from Google for a
18 Google Voice account associated with the defendant?

19 A. Yes, I did.

20 MR. TURNER: Your Honor, I have a stipulation to read.

21 "Government Exhibit 333B is a true and accurate copy
22 of records from the Google Voice account associated with the
23 email account rossulbricht@gmail.com (the Google Voice
24 account). These records were produced by Google to Agent
25 Alford pursuant to subpoena on or about November 15, 2013.

Flsdulb3

Alford - direct

1 Google Voice is a service offered by Google that enables a
2 user, among other things, to send and receive cell phone text
3 messages ("SMS" messages) over the Internet.

4 "Government Exhibit 333B contains a chart reflecting
5 the SMS messages as well as other types of communications sent
6 to or from the Google Voice account from August 1, 2013 to
7 September 19, 2013. For each of these SMS messages the chart
8 indicates the date and time of the message, whether the message
9 was incoming ("SMS in") or outgoing ("SMS out") and the phone
10 number of the other party to the message.

11 "These records were automatically generated from
12 Google's computer system at or near the time of each
13 communication."

14 Q. Could you take a look at 333B, please.

15 MR. TURNER: Your Honor, the government offers 333B
16 into evidence.

17 THE COURT: All right. Mr. Dratel.

18 MR. DRATEL: No objection.

19 THE COURT: All right. Received.

20 (Government's Exhibit 333B received in evidence)

21 THE WITNESS: I have it.

22 MR. TURNER: Would you publish it, Mr. Evert.

23 Could you put 130 back on the screen with that number
24 up top.

25 Q. Can you find the records on the spreadsheet, Mr. Alford,

Flsdulb3

Alford - direct

1 Agent Alford, that have -- well, I'm asking you, did you find
2 this phone number anywhere in these records?

3 A. Yes, I did.

4 MR. TURNER: Mr. Evert, could you zoom in on one of
5 those entries.

6 A. I believe they are on page 4.

7 Q. OK. Page 4. And where are they?

8 A. Towards the top of page 4.

9 Q. OK. Right there.

10 A. Yes.

11 (Pause)

12 MR. TURNER: Your Honor, we are at a good stopping
13 place.

14 THE COURT: All right. Ladies and gentlemen, let's
15 take our mid-morning break and we will come back and then we
16 will go until lunchtime. And the same reminders as you have
17 been hearing not to talk to each other about this case or
18 anyone else. Thank you.

19 THE CLERK: All rise as the jury leaves.

20 (Continued on next page)

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Alford - direct

1 (Jury not present)

2 THE COURT: You can step down for a few minutes and we
3 will resume in about ten minutes.

4 THE WITNESS: Thank you.

5 (Witness not present)

6 THE COURT: All right. Ladies and gentlemen, let's
7 all be seated. I have one matter and it relates to 227I, the
8 chat log page. And I want to understand, since you'd gotten
9 the other chat log pages in through a different witness,
10 whether or not 227I the government can represent is from the
11 same group as to which the other Simon, Cimon chats relate and
12 it just happens to be a different page.

13 MR. TURNER: Yes, your Honor. And you can see that in
14 the name of the file that's at the top of the header of the
15 document. It is from the same file as the other ones.

16 THE COURT: All right.

17 MR. TURNER: All the other ones with that same
18 individual.

19 THE COURT: So this was out of all of the others for
20 the Cimon, or Simon, log that were previously admitted, this is
21 jury another excerpt of the same group, is that right?

22 MR. TURNER: Correct.

23 THE COURT: OK. All right. Thank you.

24 Was there anything else which you folks wanted to
25 raise before we take our own mid-morning break?

Flsdulb3

Alford - direct

1 MR. TURNER: No, your Honor.

2 THE COURT: Mr. Dratel?

3 MR. DRATEL: No, your Honor.

4 THE COURT: All right. Thank you. Let's take a short
5 break and we'll come back.

6 THE CLERK: All rise.

7 (Recess)

8 THE COURT: Let bring out the jury.

9 (Continued on next page)

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Alford - direct

1 THE CLERK: All rise as the jury enters.

2 (Jury present)

3 THE COURT: All right. When you get to your seats,
4 please be seated. Thank you.

5 And, Joe, there is something that is buzzing.

6 Mr. Turner, you may proceed, sir.

7 MR. TURNER: Thank you.

8 BY MR. TURNER:

9 Q. Agent Alford, did any agents in your group ever make any
10 uncover purchases of drugs from Silk Road?

11 A. Yes.

12 MR. TURNER: Your Honor, I have a stipulation to read.
13 It has been marked as Government Exhibit 802A.

14 THE COURT: All right.

15 MR. TURNER: And while I am reading, may I publish
16 Government Exhibit 802 for the jury, which is what it
17 corresponds to?

18 THE COURT: Yes.

19 Any objection to -- well, 802, is it already in or are
20 you offering it?

21 MR. TURNER: I am offering it based on the
22 stipulation.

23 THE COURT: On the stipulation.

24 Mr. Dratel?

25 MR. DRATEL: No objection.

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Alford - direct

(Government's Exhibit 802 received in evidence)

THE COURT: All right. Proceed.

MR. TURNER: Thank you.

"It is hereby stipulated and agreed by and between the United States of America, by Preet Bharara, United States Attorney for Southern District of New York, Serrin Turner and Timothy Howard, Assistant United States Attorneys, of counsel, and Ross Ulbricht, by and through his counsel Joshua Dratel, Esq., as follows:

"1. If called to testify, Shelby Richardson, a Special Agent with the Drug Enforcement Administration ("DEA") would testify that from September 2011 to May 2013, Special Agent Richardson attempted a total of eight undercover purchases from the Silk Road website using the Silk Road username 'downersforyou.' Government Exhibit 802 is a spreadsheet reflecting the results of the undercover purchases. The column labeled 'Purchase Date' indicates the date the order was placed on the website. The column labeled 'Vendor' indicates the username of the vendor with whom the order was placed. The column labeled 'drug Ordered' indicates the type of drug ordered. The column labeled 'Delivery Date' indicates the date that the order was retrieved from the mailing address designated by Special Agent Richardson and placing the order.

"All of the orders reflected in the spreadsheet were placed by Special Agent Richardson using a computer located in

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Alford - direct

1 the Southern District of New York and were shipped to an
2 undercover mailing address located in the Southern District of
3 New York. All of the substances received were submitted to the
4 DEA Northeast Laboratory for testing.

5 "2. If called to testify Russell J. Gallis, a
6 forensic chemist with the DEA, would testify that on the dates
7 indicated in the column of Government Exhibit 802 labeled 'Lab
8 Test Date' Mr. Gallis tested each of the substances Special
9 Agent Richardson transferred to the DEA Northeast Laboratory.
10 The column of the spreadsheet labeled 'Net Weight' reflects the
11 weight of each substance submitted for testing after removal of
12 any packaging. The column of the spreadsheet labeled 'Drug
13 Detected' indicates any illegal drugs the substance was found
14 to contain through testing a sample of the substance using
15 reliable laboratory procedures. As reflected in the
16 spreadsheet, all substances submitted by Special Agent
17 Richardson tested positive for illegal drugs."

18 Your Honor, the government offers Government Exhibit
19 802 and the stipulation 802A into evidence.

20 THE COURT: 802 has been received and 802A is received
21 as a stipulation.

22 (Government's Exhibit 802A received in evidence)

23 MR. TURNER: Thank you.

24 BY MR. TURNER:

25 Q. Agent Alford, did you yourself participate in any

Flsdulb3

Alford - direct

1 undercover purchases from Silk Road?

2 A. Yes.

3 Q. What did you purchase?

4 A. I purchased a hacking pack.

5 Q. And by "hacking pack," what do you mean?

6 A. It is -- it was a listing for tools for someone to acquire,
7 computer programs or tools to perform computer hacking.

8 MR. TURNER: Could we actually publish Government
9 Exhibit 116B, which has already been admitted into evidence.

10 Q. The jury saw this earlier. Is this the listing for what
11 you purchased?

12 A. Yes.

13 Q. And the advertisement is for "HUGE hacking pack, 150+
14 hacking tools & programs, "is that right?

15 A. Yes.

16 Q. And would you take a look at Government Exhibit 340B in
17 your binder.

18 Do you recognize this document?

19 A. Yes.

20 Q. What is it?

21 A. It is a screenshot of the order that we placed for the
22 previously mentioned listing.

23 Q. And what is the date of that screenshot?

24 A. September 20, 2013.

25 Q. Is that around the same time that you -- that your group

Flsdulb3

Alford - direct

1 made the purchase?

2 A. Yes.

3 MR. TURNER: The government offers Exhibit 340B into
4 evidence.

5 THE COURT: My 340B is different from what you have
6 just described. I think that corresponds with what I have
7 marked as 340A. Am I wrong about this?

8 MR. TURNER: There should be a verified order section
9 at the bottom.

10 THE COURT: 340A relates to the hacking tools. Is
11 that what you are attempting to --

12 MR. TURNER: Both should, your Honor, 340A and 340B.

13 THE COURT: B relates to something else that I've got
14 in my binder unless you have changed the exhibit numbers. I
15 just want to make sure that I understand what we are receiving
16 into evidence.

17 (Pause)

18 MR. TURNER: Your Honor, maybe if you look at the
19 bottom portion of 340B.

20 THE COURT: Yes.

21 MR. TURNER: That is what I am going to be referring
22 to.

23 THE COURT: Oh, I'm sorry. OK. I was looking at the
24 top portion of 340B. All right.

25 MR. TURNER: OK.

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Alford - direct

1 THE COURT: 340B, Mr. Dratel?

2 MR. DRATEL: Objection with respect to hearsay and
3 Vayner. Hearsay certainly.

4 THE COURT: I'm sorry. It is a hearsay objection?

5 MR. DRATEL: Yes.

6 THE COURT: Hearsay and Vayner?

7 MR. DRATEL: Yes.

8 THE COURT: All right. Overruled.

9 Government Exhibit 340B is received.

10 (Government's Exhibit 340B received in evidence)

11 MR. TURNER: Could you zoom in to the "Verified
12 Orders," Mr. Evert.

13 Q. So this is -- could you explain what is shown here, Agent
14 Alford?

15 A. It is the record that we received from the Silk Road
16 marketplace about our completed -- we as soon as we completed
17 the order, we added it to cart so that is what is represented
18 in the account.

19 Q. All right. You said you placed this order around
20 September 20, 2013?

21 A. Yes.

22 Q. And what was the result of the order?

23 A. We received a response with links to click on.

24 Q. And where did you receive that response?

25 A. Into the same account on the Silk Road marketplace.

Flsdulb3

Alford - direct

1 Q. What feature of the Silk Road system?

2 A. The messaging system.

3 Q. Could you take a look at 340A, and do you recognize this
4 exhibit in your binder?

5 A. Yes. It is a screenshot of the response we got back on the
6 Silk Road marketplace for the order we placed.

7 Q. And the response you got back from who?

8 A. The Silk Road marketplace and the vendor.

9 Q. From the vendor?

10 A. Yes.

11 Q. OK.

12 MR. TURNER: Your Honor, we offer 340A into evidence.

13 MR. DRATEL: The same objection, your Honor.

14 THE COURT: All right. 340A is received.

15 (Government's Exhibit 340A received in evidence)

16 MR. TURNER: Zoom into the -- actually, could you go
17 up top, Mr. Evert, to the title there, the "Huge."

18 From: Sniffsniff5.0.

19 Subject Line: HUGE hacking pack, 150-hacking tools &
20 programs.

21 And then could you go down, Mr. Evert, to the body of
22 the message.

23 All right. It says "hello," and then there are a
24 bunch of links, or three links specifically. And then it says
25 "Freebies." There are a series of other links. Then it says,

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Alford - direct

1 "Please keep in mind that not all program will work in each
2 folder, but that's why I'm sending you extra working programs.
3 Thank you for purchasing my listing. If you have any
4 questions, feel free to send me a message."

5 Did you yourself click on any of the links you got
6 back in response to this message?

7 A. No.

8 Q. What did you do with this information?

9 A. Provided it over to the FBI.

10 MR. TURNER: No further questions, your Honor.

11 THE COURT: All right. Thank you.

12 Mr. Dratel.

13 CROSS-EXAMINATION

14 BY MR. DRATEL:

15 Q. Well, just about good afternoon, Agent Alford.

16 A. Good afternoon.

17 Q. I want to go back to something you testified about this
18 morning, government Exhibit 317.

19 A. Yes.

20 Q. That is an image attached to an email, correct?

21 A. Correct.

22 Q. If we can go to the image.

23 Now, if we go to the box there in the image on the
24 left. And that is a chat window, correct?

25 A. Yes. It appears so.

Flsdulb3

Alford - cross

1 Q. It is a Pidgin chat window?

2 A. That is reflected in the screen?

3 Q. Yes.

4 A. Yes.

5 Q. So if you look at the screen that's behind the first
6 screen -- do you see -- and that would be the one that
7 Mr. Ulbricht is operating on, right?

8 A. I can't say.

9 Q. Well, there is a different avatar at the bottom right
10 there, correct? There is an avatar at the bottom right there,
11 correct?

12 A. That -- what you are pointing at?

13 Q. Yes.

14 A. Yes, that's an avatar.

15 Q. And I want to go back to Government Exhibit 201 and show it
16 to you on the screen:

17 A. Just 201?

18 Q. F. 201F.

19 (Pause)

20 I'm sorry. 201G.

21 A. 201G?

22 Q. It is already in evidence.

23 A. All right. Got it.

24 Q. If you look on the bottom right, this is from the day of
25 Mr. Ulbricht's arrest, correct?

Flsdulb3

Alford - cross

1 A. I was not at his arrest.

2 Q. But you are familiar with the photographs taken of his
3 laptop?

4 A. Yes.

5 Q. This is one of them, correct? It is already in evidence.

6 A. OK. Yes.

7 Q. That avatar on the bottom right is someone with a sword
8 essentially, right?

9 A. Yes.

10 Q. And a mask?

11 A. It is pretty blurred, but, yes, I've seen that avatar.

12 Q. That is Dread Pirate Roberts' avatar?

13 A. Yes.

14 Q. I want to go back to yesterday -- Monday, I guess -- your
15 testimony with respect to those original Altoid posts that you
16 testified about, correct? Do you understand what I am talking
17 about, with bitcoin talk forum and shroomery.org?

18 A. Yes.

19 Q. All of those, with one exception which I will talk about,
20 were in the first half of 2011, right?

21 A. 2011?

22 Q. Yes.

23 A. The time indicated on the screenshot was 2011. I did not
24 take them in 2011.

25 Q. No, I'm not saying you took them in 2011, but the dates of

Flsdulb3

Alford - cross

1 those posts were 2011?

2 A. Yes.

3 Q. In your first half.

4 Then there was one from October of 2011.

5 MR. DRATEL: If we can go to government 306, please.

6 Q. So just look at the date first. That is October 11 -- I'm
7 sorry, October 11, 2011, right?

8 A. Yes.

9 Q. And that is about -- that is from Altoid, right?

10 A. Correct.

11 Q. "Looking for an IT person for a bitcoin startup company,"
12 right?

13 A. Yes.

14 Q. And then as contact information, it leaves the address
15 rossulbricht@Gmail.org -- @gmail.com, right?

16 A. Correct.

17 Q. And this is eight months after those other posts -- at
18 least eight months from the other posts that you talked about
19 in Government Exhibit 301, 302, 303, 304 -- if you want to --

20 A. Are you talking about the Altoid posts?

21 Q. Yes.

22 A. Yes. Approximately eight months after.

23 Q. Now, as you mentioned just before, you didn't do that at
24 the time that those were posted, when you took those
25 screenshots down, right?

Flsdulb3

Alford - cross

1 MR. TURNER: Objection to form.

2 Q. When you took those screenshots down, it was not at the
3 time that the posts were made back in 2011?

4 A. No, I wasn't on the case.

5 Q. So what you did was historical research on the Internet,
6 right?

7 A. Yes.

8 Q. And so what you showed us with those Altoid posts and that
9 information was from clicking -- well, first, putting in search
10 terms, right?

11 A. Yes.

12 Q. Restricting the dates, right, that you told us Monday,
13 right?

14 A. Yes.

15 Q. And putting in those search terms. And then when you had
16 results, you would click on links and that took you to those
17 posts, right?

18 A. Yes.

19 Q. And so anyone using Google, or whatever search engine you
20 might use, putting in search terms like that would find the
21 same results, right?

22 A. Yes.

23 Q. Now, you researched everything you could about Mr. Ulbricht
24 in 2013, right, at some point in 2013, correct?

25 A. I don't know about "everything" but a lot.

Flsdulb3

Alford - cross

1 Q. Everything you could find, pretty much, on open records and
2 a lot of subpoenas, as well?

3 MR. TURNER: Objection. Beyond the scope.

4 THE COURT: Well, I think -- rephrase. Why don't you
5 rephrase it, Mr. Dratel.

6 MR. DRATEL: Sure.

7 Q. Did you do a lot of open-source research on the Internet
8 with respect to finding out about Mr. Ulbricht?

9 A. I don't know about your definition about "a lot" but I did
10 do public-source research on Mr. Ulbricht.

11 Q. What kind of public-source research did you do?

12 MR. TURNER: The same objection. Beyond the scope.

13 THE COURT: I will allow it. We'll see where it is
14 going. I will allow a few.

15 A. Well, there is Internet searches. We have a public records
16 search that we use. FinCEN.

17 Q. Can you explain what FinCEN is?

18 A. It's a Financial Crimes Enforcement Network. There is a
19 database where you can go into the database to look for certain
20 financial transactions that would be filed in the database.

21 Q. Were there any results from your FinCEN search?

22 MR. TURNER: Objection.

23 THE COURT: Sustained.

24 Q. You didn't find anything about Mr. Ulbricht from your
25 FinCEN search, correct?

Flsdulb3

Alford - cross

1 MR. TURNER: Objection.

2 THE COURT: Sustained.

3 Q. You looked at his LinkedIn, right? You looked at his
4 LinkedIn --

5 MR. TURNER: The same objection.

6 Q. -- account?

7 THE COURT: Sustained.

8 MR. DRATEL: Your Honor, may we have a sidebar?

9 THE COURT: Yes.

10 (Continued on next page)

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Alford - cross

1 (At the sidebar)

2 THE COURT: I will tell you the basis of my rulings
3 first so you know that they are beyond the scope of the direct
4 examination.

5 MR. DRATEL: The direct examination included things
6 that he found during his research.

7 THE COURT: And you can inquire into any of them.

8 MR. DRATEL: But I should also be able to go into what
9 he didn't find. The scope of his investigation is fair game on
10 the cross.

11 THE COURT: No, it is not, not in the way that you are
12 doing it. What you are trying to do is -- if you want to ask
13 somebody about LinkedIn, you need to find a witness who has
14 talked about linked.

15 MR. DRATEL: I don't think so. I think that if he has
16 done this investigation of him, they can't just narrow it.
17 What the scope is is not what he testified about; it is the
18 subject matter of his testimony. The subject matter of his
19 testimony is he did Internet research on the guy. And they are
20 allowed to put in the things they want to put in, I don't think
21 that is fair for the scope of cross.

22 THE COURT: You can't inadvertently build up his
23 character.

24 MR. DRATEL: I am not trying to. That is not what the
25 question is about.

Flsdulb3

Alford - cross

1 THE COURT: Let me ask the government.

2 MR. TURNER: Your Honor is exactly right. We have
3 been over this territory before. If they want to use evidence
4 in their affirmative case that their LinkedIn page, first of
5 all, is not hearsay and it is properly authenticated and it is
6 somehow relevant to the defendant's case, they can do that.
7 They don't get to do that through this witness.

8 THE COURT: All right. My ruling stands. OK? So
9 stay within the investigation, stay within the areas of search.
10 But if there are things where you are wondering if they are
11 within that you haven't yet covered, you can ask a question and
12 I will sustain an objection but --

13 MR. DRATEL: Yes. I need to make a record.

14 THE COURT: You can make a record at the break. That
15 we can do at the break.

16 MR. DRATEL: I need to ask the questions.

17 THE COURT: We can make a record as to various things
18 at the break. But if you want to cover certain things which
19 you think are in a gray area right now, I am not going to
20 preclude you from doing that. But if there are things that you
21 can do other than what you know is going to be objectionable,
22 then let's go ahead and do them now.

23 MR. DRATEL: I don't know what is objectionable. In
24 my experience, I have in never been so curtailed with
25 cross-examination of an agent who has done a wholesale

Flsdulb3

Alford - cross

1 investigation of the defendant and then to be only limited to
2 the things that the government wants to put in is just, to me,
3 I will have to get through this and see where we are.

4 THE COURT: I am comfortable with my rulings despite
5 your experience.

6 (Continued on next page)

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Flsdulb3

Alford - cross

1 (In open court)

2 (Pause)

3 BY MR. DRATEL:

4 Q. Now, with respect to the hacking tools that you talked
5 about just before you completed your direct testimony, you did
6 not click on any of those links, correct?

7 A. No, I did not click on any of the links.

8 Q. So when you were assigned to the Silk Road case, you
9 obviously examined a significant amount about the site,
10 correct?

11 A. Yes. I researched the site.

12 Q. Would you -- is it fair to say, it was the most
13 sophisticated and extensive criminal marketplace on the
14 Internet today?

15 MR. TURNER: Objection. Foundation.

16 THE COURT: I think you need to lay more of a
17 foundation --

18 Q. Well --

19 THE COURT: -- for this witness for comparison.

20 MR. DRATEL: Yes.

21 Q. Had you ever seen an Internet site as sophisticated as Silk
22 Road in terms of a place where you could buy drugs on the
23 Internet?

24 MR. TURNER: Objection to form. Foundation. 403.

25 THE COURT: I will allow it. You may answer.

Flsdulb3

Alford - cross

1 A. I can't really say. It was my first case, so it was the
2 one and only so.

3 Q. Well, didn't you write that it was the most sophisticated
4 and extensive criminal marketplace on the Internet today?

5 A. At the time of the investigation? At which time are you
6 talking about?

7 Q. September 30, 2013, in the civil forfeiture complaint that
8 you signed.

9 A. Yes.

10 Q. And Silk Road in its current form at the time as of
11 September 30, 2013 was created on or about June 18, 2011,
12 right?

13 MR. TURNER: Objection to form. Foundation.

14 THE COURT: Do you mean to say -- why don't you
15 rephrase the question. So I think that you want to compare the
16 June 2011 to September 2013.

17 BY MR. DRATEL:

18 Q. Well, the Silk Road that existed in September of 2013 was
19 in that form created on or about June 18, 2011, right?

20 MR. TURNER: Objection. Foundation.

21 THE COURT: If you know.

22 A. I don't know if it was created at that time. I came by the
23 case in 2013.

24 Q. Did you write "Silk Road in its current form was created on
25 or about June 18, 2011," did you write that September 30, 2013

Flsdulb3

Alford - cross

1 in the civil forfeiture complaint that you signed under oath?

2 MR. TURNER: Objection to the foundation of the claim.

3 THE COURT: I will allow the question.

4 A. I would have to refresh my memory. I would have to see the
5 document.

6 MR. DRATEL: I show you what's marked 3501-207 through
7 -263.

8 (Pause)

9 MR. TURNER: Your Honor, the government objects. The
10 complaint says, "Upon information and belief."

11 THE COURT: Hold on. Hold on. Let me just --

12 MR. DRATEL: He said --

13 THE COURT: I understand. Can I just take a look at
14 it? I don't have that series handy. Sorry.

15 (Continued on next page)

Flsgulb4

Alford - cross

1 THE COURT: Mr. Dratel, can you point me to a page?

2 MR. DRATEL: Sure. 245, your Honor.

3 THE COURT: 245. With the signature?

4 MR. DRATEL: Is that the signature page? I thought
5 that was --

6 THE COURT: 245 is not a signature page.

7 MR. DRATEL: Oh, the signature page. There's --

8 THE COURT: You said he signed something.

9 MR. DRATEL: 238.

10 THE COURT: 238?

11 MR. DRATEL: Wait.

12 THE COURT: The only signature I have is on the last
13 page, but there may be another one.

14 MR. DRATEL: No. There's another page, your Honor.

15 THE COURT: All right. Hold on. Hold on. It's pages
16 208 through I think it's 238 or 228. I can't tell. It's cut
17 off. Let me just take a look. I'll allow it.

18 Mr. Dratel.

19 MR. DRATEL: Thank you.

20 THE COURT: The government can bring out what it wants
21 to bring out in cross or redirect.

22 MR. DRATEL: Thank you, your Honor.

23 THE COURT: I'm sorry. There are some pages.

24 MR. DRATEL: Thanks.

25 A. May I see it.

Flsgulb4

Alford - cross

1 Q. Yes. Certainly. I'm just going to caddycorner it for you
2 here.

3 A. Thank you.

4 Q. I ask you to look at 245, if you want to look at the
5 document, but I'm directing you to 245.

6 THE COURT: There are two different documents in the
7 pile that I had.

8 MR. DRATEL: Right.

9 THE COURT: The first pile on the right was the one
10 with the signature that I was referencing.

11 MR. DRATEL: Right.

12 THE COURT: That's Exhibit A to the same document,
13 Mr. Dratel?

14 MR. DRATEL: Yes.

15 A. My signature page --

16 Q. Your signature page is here.

17 THE COURT: To be clear, that's not his statement in
18 Exhibit A. You'll rephrase that.

19 MR. DRATEL: I'll get to that.

20 THE COURT: Thank you.

21 A. Can you point to my signature page?

22 Q. Sure. It's on the back of that first document.

23 A. This one?

24 Q. Let me go up there and make sure we're looking at the right
25 one. This document.

Flsgulb4

Alford - cross

1 A. Okay. All right. Thank you.

2 Q. And let me show you one other thing and draw your attention
3 to this and make sure I have the right page. Okay. So, look
4 at page 215 which is your -- which is the civil forfeiture
5 complaint.

6 A. Okay. This one. Yes.

7 Q. That incorporates by reference the other document, correct?

8 A. Yes.

9 Q. So when you do that, you're incorporating by reference
10 meaning you're adopting everything in there, right?

11 MR. TURNER: Your Honor, the government objects on
12 hearsay grounds. The witness should not be permitted to
13 testify --

14 THE COURT: If it's an adopted statement, let me just
15 ask, apart from a legal definition of incorporation by
16 reference, Mr. Dratel, why don't you ask him what he meant he
17 intended to do.

18 Q. What did you intend to do by incorporating by reference
19 that other document?

20 A. This document?

21 Q. Yes.

22 A. I was incorporating it into the civil forfeiture so we can
23 seize the --

24 Q. Right --

25 A. -- the servers.

Flsgulb4

Alford - cross

1 Q. But the purpose of putting that in there was to include all
2 the facts that were in there in the -- withdrawn.

3 The purpose of incorporating the complaint, the
4 criminal complaint by reference, was to incorporate all of
5 those facts into the civil forfeiture complaint, correct?

6 A. Correct.

7 Q. So if you look at page 245, --

8 A. Yes.

9 Q. -- does that refresh your recollection?

10 A. Yes, it does.

11 Q. That the current form Silk Road was created on or about
12 June 18, 2011?

13 MR. TURNER: The government objects on hearsay grounds
14 and beyond the scope.

15 THE COURT: It's not beyond the scope. It's for a
16 different purpose.

17 Mr. Dratel, why don't you, just so we have a clear Q
18 and A, though the prior question may have gotten so far lost
19 with the back and forth.

20 MR. DRATEL: Thank you, your Honor.

21 Q. So, does that refresh your recollection that you had stated
22 that in its current form, Silk Road was created on or about
23 June 18, 2011?

24 A. Can you repeat the question.

25 Q. Sure. That you had stated that Silk Road in its current

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Alford - cross

1 form was created on or about June 18, 2011?

2 A. It was my belief at that time.

3 Q. But you stated it under oath in that document, right?

4 A. Yes. It was my belief.

5 Q. And that was based on your looking at all of the evidence
6 available to you from the Internet and from other pieces of
7 your investigation as well, right?

8 THE COURT: I think we need to be clear. The
9 statement was admitted for the limited purpose of impeachment
10 and refreshing recollection, not for the truth of the
11 statement, just so that it's clear. I think you should proceed
12 accordingly.

13 Q. On October 19, 2011, there was an outage on the Silk Road
14 that was reported, right, on the site?

15 A. I don't know. October 19?

16 Q. 2011, did you see posts indicating an outage on the Silk
17 Road October 19, 2011?

18 MR. TURNER: Objection; beyond the scope. He's
19 already testified.

20 THE COURT: I don't know yet.

21 MR. TURNER: He testified his investigation did not
22 begin until 2013.

23 THE COURT: Hold on.

24 Does this tie in directly to one of the posts the
25 government has showed him?

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Alford - cross

1 MR. DRATEL: Well, it's the same time as that
2 October 11 post that they showed, the Altoid post.

3 THE COURT: All right. Why don't you go ahead and
4 proceed.

5 Q. October 19, 2011, you're aware of posts on Silk Road that
6 there was an outage on the site at that time, correct?

7 A. I'd have to see those posts.

8 Q. Okay. Look at 247. See if that --

9 A. I see it.

10 Q. Okay. The October 19, 2011 posts reported an outage on the
11 site at Silk Road?

12 MR. TURNER: Your Honor, hearsay and beyond the scope.
13 We'd like a side bar.

14 THE COURT: Hold on. Let me take a look. 247?

15 MR. DRATEL: Yes.

16 THE COURT: I don't have that in my binder. Can I
17 look at yours?

18 THE WITNESS: Yes, ma'am.

19 THE COURT: You're in the same document.

20 MR. DRATEL: Yes.

21 THE COURT: I'm sorry. I was looking at Exhibit 247.
22 It's page 247.

23 MR. DRATEL: No. I'm sorry.

24 THE COURT: Let's have a side bar. Thanks. You know,
25 I'll tell you what? How do you folks feel about returning at

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Alford - cross

1 1:30 as opposed to 2:00? Or do you have problems? No, we
2 can't do that. We can't do that.

3 We'll take an extra few minutes and try to start five
4 or ten minutes early. I don't want you sitting through this.
5 We'll probably have a couple of things to work out and I want
6 to make sure that it's smooth for you folks.

7 So does it work if we started at ten to 2:00 for
8 people or do you have problems with that? I know some people
9 do things during the break. All right. Let's start at ten
10 minutes to 2:00. That way, it's only a five-minute difference,
11 all right. Thanks very much. And I want to remind you not to
12 talk to each other or anybody else about the case.

13 Thank you.

14 (Jury excused)

15 THE COURT: Agent Alford, you may step down and have
16 your lunch as well.

17 (Witness temporarily excused)

18 (Continued on next page)

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Alford - cross

1 (In open court; jury not present)

2 THE COURT: Ladies and gentlemen, let's all be seated.
3 We have a couple of things that I think are worth doing now.
4 Let's start from the beginning of the things that we were going
5 to do at the lunch break and then we'll pick up, Mr. Turner,
6 with where you are, and I think that these logically fit
7 together.

8 First, Mr. Dratel, I had indicated to you at the side
9 bar that we had that at the break, you'd be able to make a more
10 of a record to the extent that you hadn't made the record that
11 you wanted to fully at side bar, so if there's anything else
12 you want to say, otherwise, we'll go straight to the issue that
13 is currently tee'd up.

14 MR. DRATEL: Your Honor, to preclude me from going
15 through this witness' investigation when he did so much
16 research and looked at so many things and to -- I think is just
17 an improper curtailment of my cross-examination, and just to
18 put out some of the things that I was going to do is about him
19 researching Mr. Ulbricht, one is the LinkedIn, another is about
20 phone records, another is about posts with respect to certain
21 dates, TECS search that he did, and that puts us in the current
22 posture.

23 THE COURT: All right. As for the phone records and
24 the posts of certain dates, of course, if they relate to any of
25 the matters that were opened on the direct examination of this

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Alford - cross

1 witness, you're certainly welcome to go into them. The
2 investigation that this witness conducted to the extent that he
3 testified about it or is logically related to the scope as
4 scope is defined under the case law, you can go into it. But
5 what you've been doing for the questions on LinkedIn and FinCEN
6 search or whatever it's called --

7 MR. TURNER: FinCEN.

8 THE COURT: -- FinCEN was beyond the scope, and I
9 suspect that TECS search is the same, although I don't know
10 what TECS search is, it wasn't opened up on direct.

11 It's certainly the case that there are a variety of
12 instances when people are allowed, and I know you referred to
13 in your experience, being allowed to do more things along the
14 lines of what you were suggesting where judges will allow some
15 amount of leeway, particularly in the absence of an objection.
16 But in the face of an objection, it is perfectly appropriate
17 under the case law to -- indeed, some would argue that it's not
18 only appropriate, but it's important under the case law so that
19 the jury does not have its time wasted or misled or brought
20 down alleys and byways it shouldn't otherwise be brought down
21 to limit the scope of cross-examination to the scope of the
22 direct.

23 You have made your record in terms of the fact that
24 you believe this is within the scope of the direct and somebody
25 probably other than myself certainly will ultimately decide

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Alford - cross

1 that if you choose, if there is any appeal in this matter, if
2 there's even a conviction. I don't know where this matter will
3 go, but that's my ruling on that issue.

4 Mr. Turner, was there anything else the government
5 wanted to say on that particular issue? Let's go on to the one
6 that is currently -- that we have tee'd up.

7 MR. TURNER: I think this is endemic of a larger
8 pattern. The LinkedIn, for example, if the defense wants to
9 use a LinkedIn page, they have to have a valid basis. First of
10 all, they have to get authenticated LinkedIn records, either by
11 stipulation or authentication by a document custodian, but then
12 it would have to clear the hearsay bar. And if they're
13 introducing it -- for example, if the LinkedIn page says I,
14 Ross Ulbricht, was running Good Wagon Books and now I'm doing
15 an economic experiment, that is hearsay. They cannot get that
16 in. They can't get it in through this witness. They can't get
17 it in through another witness. And the fact that this witness
18 may have looked at the LinkedIn page does not change that in
19 any way. It's hearsay, and it should not come in. And it's
20 the same for the documents we're talking about now.

21 What we're talking about is a forfeiture complaint
22 that this witness signed that is based on hearsay in part.
23 Agents can sign complaints based on all sorts of things:
24 Information they get from other agents.

25 THE COURT: The issue that you segued into now, which

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Alford - cross

1 is the verified complaint, which this witness did sign the
2 first whatever number of pages it is under oath is a sworn
3 statement.

4 MR. TURNER: Right.

5 THE COURT: And it does incorporate the second
6 document sworn under oath by a different agent.

7 MR. TURNER: Right.

8 THE COURT: That, though, I think raises a *Ramirez*
9 issue if I have the name of the case correct. I have actually
10 forgotten. It's the case. In any event, we were looking at,
11 that set of case law not too long ago in connection with a
12 different issue, which is, confronting the witness with a
13 statement or an admission if it's something that's material to
14 the case.

15 Now, there's a difference, and the reason that I
16 allowed it in for this witness was not for that purpose but was
17 because it was potentially impeachment purposes to show that he
18 said he didn't recall making the statement and then he then
19 recalled making the statement, so they can use a lot of
20 different statements for that. But to the extent that
21 Mr. Dratel was going into the truth, I think we get into a
22 debate about admissions of a party opponent.

23 MR. TURNER: I think that's exactly where we're
24 headed, your Honor, because that's why the defense keeps on
25 wanting to pull these documents out. They want to pull from a

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Alford - cross

1 criminal complaint that somebody else signed. All the
2 forfeiture complaint says is, you know, on this date, a
3 complaint was signed and it's attached hereto as Exhibit A,
4 incorporated by reference.

5 So this is an example where all the agent knows is
6 that some other agent said this about a post on Silk Road.

7 THE COURT: Why couldn't Mr. Dratel, under that line
8 of cases that we discussed and I recited, just stand up and
9 recite facts which he believes are material and remain in
10 dispute?

11 MR. TURNER: Because, first of all, we don't accept
12 that a criminal complaint sworn out by an agent is an admission
13 on the part of the government that can be just admitted through
14 an Agent Alford's testimony.

15 THE COURT: I'm remembering the cases. It's the *GAF*
16 case and the line of cases around the *GAF* case that I had in my
17 robing room, so I'll read it again.

18 MR. TURNER: *GAF* was a bill of particulars signed by
19 an attorney and *Ramirez* specifically reserved decision on
20 whether an agent affidavit should be treated the same way.
21 There is no case law that specifically holds that an agent
22 affidavit should be treated the same way.

23 But if the defense wants to show there was some post
24 at some time, they have a copy of the servers. They can do
25 this in the defense case. They can say we looked at the

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Alford - cross

1 servers, there was a forum post on this date and make whatever
2 point they want to make, which I don't think honestly is
3 relevant in any event; but this is the wrong way to do things
4 through this agent which it's beyond the scope, he didn't
5 testify about posts that he saw on Silk Road, no testimony at
6 all about anything this agent saw on Silk Road, except the
7 hacking offer that he bought from, it is beyond the scope. And
8 for them to try to insert their defense case in this circuitous
9 way is confusing to the witness, it violates the hearsay rules
10 and it's not proper.

11 MR. DRATEL: It can't be confusing to the witness. He
12 swore to all of that. He wrote out that complaint. Not only
13 that, he wrote the other complaint, but Agent Tarbell signed
14 it, and that's the way this case went down.

15 The other thing is, it is astonishing, contrary to
16 case law, contrary to due process, contrary to every rule there
17 could possibly be that they could have an agent swear to facts
18 to take to a judge to get a result and then come in here and
19 disavow it, and that's exactly what the Second Circuit says.

20 MR. TURNER: To be clear --

21 MR. DRATEL: They cannot do that.

22 MR. TURNER: I'm not disavowing any facts. What I'm
23 saying is, this is the wrong way to go about getting the
24 defense case in. It's beyond the scope. It relies on hearsay.
25 If they want to introduce those posts, they can do it by having

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Alford - cross

1 their computer person explain that these posts were pulled off
2 the server, the screenshots were taken at a particular time,
3 make whatever points they want. We're not saying at all
4 anything in the complaint is inaccurate. The point is, this is
5 the wrong way to go about proving the defense case. We already
6 went through this to some extent.

7 MR. DRATEL: Then I would move to strike all of Agent
8 Alford's testimony with the exception of what he actually did
9 on the Internet, because everything else is hearsay, everything
10 else is beyond his knowledge, everything else is fed to him so
11 he can testify to that and then not be cross-examined. That's
12 what's happening here.

13 MR. TURNER: The records he testified about were
14 properly authenticated with stipulations.

15 THE COURT: Anyway --

16 MR. DRATEL: That's not the issue, he's not the proper
17 witness.

18 THE COURT: Special Agent Alford or Agent Alford -- is
19 he a special agent or an agent?

20 MR. TURNER: Special Agent.

21 THE COURT: Special Agent Alford, the testimony that
22 he gave on direct, the Court had rulings. To the extent there
23 were objections, the Court dealt with them at the time.

24 In terms of the particular issue, which we're dealing
25 with right now, which is the verified complaint, there are two

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Alford - cross

1 analytically distinct issues that I want to separate: One is
2 the extent to which it can be used with this witness right now
3 on cross, and separately the extent to which the defendant may
4 use it in connection with a defense case.

5 The second and latter use is a use that will come when
6 we -- and a ruling on that will come logically once the defense
7 case commences if the defendant chooses to put one on. The
8 former issue is first and foremost dealt with in terms of the
9 scope of the direct examination and not going beyond the scope.

10 Here, however, what I'm going to do is, I want to
11 reread, which I can do with my LiveNote, some of Special Agent
12 Alford's direct. I've got a little bit of time before I have a
13 matter coming up where I can do that so that I can refresh
14 myself as to the scope of the direct. I encourage you folks to
15 do that as well so we don't end up with either examination that
16 goes where it shouldn't go or objections that go where they
17 should not go because he did start on Monday. Being refreshed
18 on it I think is useful.

19 Then in terms of impeachment, if there's something on
20 direct and there is a statement that this witness made that was
21 contrary to that anywhere, then that obviously can be used for
22 impeachment purposes and the origin of that statement is not
23 particularly relevant.

24 Mr. Turner.

25 MR. TURNER: Understood, your Honor. I don't think

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Alford - cross

1 the witness was impeached with respect to any statement he made
2 on direct. I think what the pattern is, you made this -- isn't
3 this true that there was this post, okay, that the agent had
4 actually never seen before himself, has no personal foundation
5 at all; then the agent says I don't know, and then he says,
6 well, didn't you say this, he shows him the affidavit of
7 another agent to impeach him on that statement. And then it's
8 using that to try to get in the fact that there was this post
9 actually made that this agent actually has no foundation
10 himself to testify about. Again, this is not the proper way to
11 get it in there and it's for the truth.

12 THE COURT: I understand the arguments.

13 Mr. Dratel, do you have something you wanted to add?

14 MR. DRATEL: No.

15 THE COURT: I understand the arguments. Let's take
16 our lunch break now. Unless there's something else that you
17 folks would like to raise, why don't we come back at quarter
18 of. We'll talk about the resolution of this issue. I would
19 like you back at a quarter of. The jury actually will back
20 hopefully at ten of. They're scheduled to be back then and
21 then we can resume.

22 Let me ask the government who is next.

23 MR. TURNER: After this, it will be HSI Special Agent
24 Dylan Critten.

25 THE COURT: Let's take our own lunch break. Thank

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Alford - cross

1 you. I have a matter at 1:30, but I don't think I need to have
2 you folks. I can do it in the robing room.

3 (Luncheon recess)

4 (Continued on next page)

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Alford - cross

AFTERNOON SESSION

1:45 p.m.

(In open court; jury not present)

THE COURT: Let's all be seated for a moment before we start again with the jury.

I had an opportunity to go back over the transcripts and have a fairly good and refreshed sense now of what was in the scope of the direct. And I also have a list of points that were raised, but also just generally I can recall now much better.

I also went back to Second Circuit case law on limitations of cross-examination and am satisfied that the scope of direct of course, under both the Federal Rules of Evidence as well as Second Circuit case law defines the scope of cross-examination.

Cross-examination, as we all know, is limited to things like showing that the witness who testified is wrong about a fact, is biased, is prejudiced, has self-interest, you know, general motivations to testify in a manner that's either for the government or suggests untruthfulness.

Things which go into entirely new areas would be beyond the scope of the direct. Now, that of course, begs the question as to what the phrase "entirely new areas" means, but I am convinced and comfortable that things like LinkedIn, etc., TECS search and FinCEN are beyond the scope of the direct.

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Alford - cross

1 Now, in terms of the affidavit, that, I haven't read
2 every paragraph to know whether or not there's something in the
3 affidavit that goes to the points of whether the witness'
4 testimony is wrong, the testimony given on direct was wrong or
5 otherwise demonstrates bias, prejudice, motivation to testify
6 untruthfully, something like that. If it does, then obviously
7 it would be appropriate, first, to set up that point and then,
8 second, to go into it.

9 Let me just give you some cases. There are oodles of
10 Second Circuit case law on the points I have just stated: *U.S.*
11 *v. Figueroa*, 548 F.3d 222, Second Circuit; *U.S. v. Lanza*, 790
12 F.2d 1015; *U.S. v. Pedroza*, 750 F.2d 187; *U.S. v. James*, 712
13 F.3d 79, and there are many other cases supportive of the
14 propositions that I've just stated.

15 So, the scope of the cross-examination for the witness
16 currently on the stand, Mr. Alford, will be limited to the
17 scope of the direct. The scope of the direct will not include
18 things like, as we said before and I had already ruled before,
19 the LinkedIn, FinCEN, TECS search, or other matters which were
20 not raised and reasonably related to what was within the scope
21 of the direct.

22 In terms of the use of the declaration or affidavit or
23 complaint, the sworn statement, it will depend on whether or
24 not there are particular statements in there which go to one of
25 the areas that I've just suggested, but it has not been

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Alford - cross

1 proffered for that use at this point.

2 Mr. Turner.

3 MR. TURNER: Yes. Several points, if I may.

4 THE COURT: Yes.

5 MR. TURNER: In terms of the affidavit, I just want to
6 be very clear on what's going on: There are two possible uses
7 the defendant could use it for and I think both of them are
8 improper here: First is impeaching a prior inconsistent
9 statement. On that point, all the affidavit says, this agent's
10 affidavit -- it's not even this agent's affidavit -- all the
11 civil forfeiture complaint says that the agent signed is that
12 on or about September 27th, 2013, the Honorable Frank Maas
13 signed this criminal complaint and this criminal complaint
14 alleges, among other things, and then it specifies what it
15 alleges, and then it attaches a copy.

16 It does not say "I know all these things to be true."
17 It just says there's another complaint out there that was sworn
18 on this date that alleges these things.

19 The agent has to say something contradictory to those
20 statements in order for that criminal complaint to be used as
21 impeachment material. For example, if the agent were to
22 testify on this complaint, the criminal complaint was sworn
23 July 2013 when in the civil forfeiture complaint it says on or
24 about September 2013 it was signed, that would be inconsistent.
25 And then you could say, well, didn't you say here that it was

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Alford - cross

1 signed September --

2 THE COURT: I'm not sure if we're going to get
3 to -- because I don't know whether or not there is a statement
4 in that complaint which is inconsistent with what this witness
5 said on direct.

6 MR. TURNER: Right.

7 THE COURT: If there isn't, then we don't need to go
8 up that tree right now.

9 MR. TURNER: I just want to get clear ahead of time
10 what the scope of the statements are in the agent's own civil
11 complaint.

12 THE COURT: I hear your point, but before we have to
13 cross that bridge, let's find out whether that bridge needs to
14 be crossed in terms of that.

15 MR. TURNER: Absolutely.

16 THE COURT: I'm not ruling one way or the other on
17 that point because we may differ slightly.

18 MR. TURNER: In the interest of avoiding side bars, I
19 wanted to front our concerns.

20 THE COURT: I understand. It would be helpful if you
21 had a copy of that.

22 MR. TURNER: I do.

23 THE COURT: Terrific. You said you had other points
24 to make?

25 MR. TURNER: Right. The only thing that this

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Alford - cross

1 complaint can be used to impeach the witness on is if he makes
2 some statement that contradicts his own statement in this
3 complaint. But what the defense is trying to do is use this
4 prior statement and the reference it makes to a prior statement
5 of another agent is to get that information in for its truth,
6 but what they really want to do is to rely on *GAF*, and that's
7 wrong here for several reasons.

8 THE COURT: But I don't think we need to get to *GAF*
9 because at this point that would come in, if at all, in the
10 defendant's affirmative case --

11 MR. TURNER: Absolutely.

12 THE COURT: -- should he choose to put one on. So
13 that's the analytical second part that I spoke about before
14 lunch.

15 MR. TURNER: That is absolutely our position.

16 THE COURT: You don't need to argue it right now.

17 MR. TURNER: That's fine.

18 THE COURT: Hold your fire on that. There may come a
19 time, but we're not going to get to the affirmative utilization
20 of any admissions or potential admissions or whether they're
21 not admissions until we get to the defendant's case.

22 MR. TURNER: Thank you.

23 THE COURT: Mr. Dratel, is there anything further you
24 would like to add?

25 MR. DRATEL: Yes. I don't think that those are the

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Alford - cross

1 only -- even though they're examples, they're certainly not
2 exhaustive as to what you can ask on cross-examination. And
3 "entirely new areas" is a term that is ambiguous and vague, and
4 my point is that you can't have a witness testify about a
5 jigsaw puzzle, have him put one piece of the puzzle in evidence
6 and then be constrained from cross-examining about the other
7 pieces of the puzzle, and that's what I'm attempting to do.

8 THE COURT: I hear your point. I disagree with it.

9 Is there anything else you'd like to say in terms of
10 making your record?

11 MR. DRATEL: Yes. In the context of the investigation
12 as a whole, all of these issues are relevant and they go to
13 questions of bias and other issues with respect to that and I'm
14 going to develop that further in the rest of my
15 cross-examination.

16 THE COURT: Let's just talk about all of these issues.
17 What issues are relevant to bias that you want to go into that
18 you say are these issues because if there are, for instance,
19 the LinkedIn account goes to bias --

20 MR. DRATEL: The LinkedIn account goes to the fact
21 that it was made, the fact that the statement was made.

22 THE COURT: So what goes to bias that you think is
23 captured within my ruling, because if so, and it truly goes to
24 bias, it should not be captured within my ruling and it's not.
25 I said bias is fair game and regular, run-of-the-mill

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Alford - cross

1 impeachment is certainly fair game.

2 MR. DRATEL: The entire scope of the investigation is
3 a question of bias in the sense that what was done when and how
4 it evolved so that once this digital trail led to Mr. Ulbricht,
5 that was it, and everything else was dispensed with.

6 THE COURT: That, in the Court's view, that's not
7 about bias. You can go into any portion of the investigation
8 that this particular witness has testified about on cross and
9 if you need other things and he's an appropriate witness for
10 you to call on direct, you can cross that bridge when you come
11 to it, but the full investigation is not about bias or
12 impeachment or anything else. He's here to testify about, on
13 cross-examination, matters within the scope of what he
14 testified about on direct.

15 MR. DRATEL: But that doesn't insulate him from things
16 that he leaves out from things that are implicated and
17 contextural. Cross-examination is about context. It's not
18 about being limited to the questions that the prosecutor asked
19 and he's asking him in a leading fashion.

20 THE COURT: If the context that you're talking about
21 is that you want to add in LinkedIn in the context of showing
22 what he did with Gmail, the answer is that's not appropriate
23 context. If the context for Gmail is something relating to the
24 Gmail testimony that he gave, you're certainly welcome to build
25 up that area, but we're not going into the linked in area or

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Alford - cross

1 FinCEN or TECS search.

2 MR. DRATEL: He does a thousand searches and all he's
3 got is what he puts here, and what about all the things they
4 don't have?

5 THE COURT: That's the scope of your cross. If you
6 want to call him in your case, you can list him as a witness
7 and make your decision and then you can proffer him and we can
8 determine if he's a relevant witness for you, but the scope of
9 his cross is what I've said.

10 Is there anything else, a new point that you would
11 like to add?

12 MR. DRATEL: No. With respect to cross-examining with
13 respect to the civil forfeiture complaint and the criminal
14 complaint, I only used it when he failed to recollect.

15 THE COURT: He did, although I allowed you to go
16 beyond the scope. When I was rereading that piece, I allowed
17 you to go beyond the scope to get to that statement, so you
18 were already beyond the scope.

19 MR. DRATEL: This is someone who investigated the
20 history of Silk Road from the start and has accessed all of
21 these -- you know, it can't be that he looks at all of the
22 emails and he looks at all of the chats and he looks at the
23 laptop and looks at the servers --

24 THE COURT: You can call him in your case, but for the
25 government's case, and they bear the burden of proof, they can

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Alford - cross

1 constrain the scope of their direct as they deem appropriate.
2 You can then cross them on the scope. And then if you want to
3 put on another case, if you chose to do so, you have no
4 obligation to do so, you may do so. And if he's relevant for
5 that and you have things to bring out where he's a precipient
6 witness, so be it.

7 Let's bring the jury out. I want to know, is there
8 any new point: These are the points we have already gone over.

9 MR. DRATEL: No.

10 THE COURT: All right. Thank you.

11 (Continued on next page)
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Alford - cross

1 (In open court; jury present)

2 THE COURT: I want to apologize to having you folks
3 ready to go at ten of, and I know you were. All I can say is
4 the best laid plans.

5 We are on the cross-examination of Mr. Alford.

6 Mr. Dratel, you may proceed, sir.

7 MR. DRATEL: Thank you, your Honor.

8 GARY ALFORD,

9 CROSS-EXAMINATION CONTINUED

10 BY MR. DRATEL:

11 Q. Now, good afternoon, Agent Alford.

12 A. Good afternoon.

13 Q. You were focused in your investigation on trying to
14 identify Dread Pirate Roberts, correct?

15 A. At one point, yes.

16 Q. And did you come across evidence suggesting that there was
17 more than one Dread Pirate Roberts during the course of the
18 Silk Road?

19 A. I did not.

20 Q. Didn't you refer to Mr. Ulbricht at one point as the
21 original DPR?

22 A. I don't recall that. May I see the document?

23 Q. Sure. I show you what's marked as 3501-0002 and ask you to
24 just read that on top.

25 A. "I received Google" -- The entire thing?

Flsgulb4

Alford - cross

1 Q. Don't read it. Read it to yourself. I apologize.

2 A. Okay. Okay.

3 Q. Does that refresh your recollection that you, in December
4 of 2013, December 30th, 2013, referred to Mr. Ulbricht as the
5 original DPR?

6 MR. TURNER: Objection; agent belief.

7 THE COURT: He's asking whether or not he made that
8 statement. You may answer.

9 A. Yes. I was referring to --

10 Q. Just "yes" is fine. Thank you.

11 A. Yes.

12 Q. And when you did all the -- when you looked for comparisons
13 of things that were happening online versus returns on
14 subpoenas and other things that you could find online such as
15 Google and other -- withdrawn.

16 When looking at Mr. Ulbricht, you were trying to
17 compare time frames with various things that were going on,
18 either on Google or Facebook -- Gmail, rather, or Facebook and
19 versus other things like chats and things like that, right?

20 A. Information that was found on the laptop versus information
21 we found from outside.

22 Q. And you did that a little bit with respect to Richard Bates
23 as well, correct?

24 MR. TURNER: Objection; beyond the scope.

25 THE COURT: Sustained.

Flsgulb4

Alford - cross

1 Q. Did you at one point find evidence that someone who worked
2 at eBay or PayPal was Dread Pirate Roberts?

3 MR. TURNER: Objection; agent belief.

4 THE COURT: Sustained.

5 Q. One of the other purposes of your investigation was about
6 looking at bitcoins, correct?

7 A. At bitcoins?

8 Q. Trying to find bitcoin wallets and Silk Road bitcoin?

9 MR. TURNER: Objection; form and beyond the scope.

10 THE COURT: Well, I don't understand how it's within
11 the scope. Sustained.

12 Q. You had access to the Silk Road servers at some point, too,
13 correct?

14 MR. TURNER: Objection; beyond the scope.

15 THE COURT: I don't know where this is going. I don't
16 find it within the scope. I can't conceive how it's within the
17 scope. Sustained.

18 Q. Well, you talked about Government Exhibit 241, correct, on
19 your direct?

20 A. Can you refresh.

21 Q. The log?

22 A. The log.

23 Q. Yes. In fact, there were other documents -- withdrawn.

24 You had access to the private messages, right, you reviewed
25 private messages on the Silk Road server?

Flsgulb4

Alford - cross

1 MR. TURNER: Objection; beyond the scope.

2 THE COURT: I'll allow it. Let him develop a few
3 questions on this.

4 A. Can you repeat the question?

5 Q. Sure. By the way, all the things that you looked at and
6 that you went through today, you developed after the fact;
7 meaning that they weren't at the time that those posts were
8 made or those emails were sent or anything like that? You did
9 all of that in the course of preparation for this trial,
10 correct?

11 A. Everything had to be done after the fact. It was -- it
12 happened before.

13 Q. So you had access to private message system, right, that
14 was on -- from Silk Road on the servers, right?

15 MR. TURNER: Same objection, and objection to form.

16 THE COURT: What's the objection?

17 MR. TURNER: Beyond the scope and the form.

18 THE COURT: Sustained as to the scope.

19 If you're going to tie it -- are you going to tie it
20 into 241?

21 MR. DRATEL: Yes.

22 THE COURT: Tie it directly to 241 and then we'll
23 understand it.

24 MR. DRATEL: I'm building a foundation.

25 THE COURT: The parameters.

Flsgulb4

Alford - cross

1 Q. Let me show you what's marked as Defendant's E. Let's go
2 back to 241 for a second. Let's do that first.

3 Government's 241, if we can look at the first page at
4 the bottom?

5 A. 241 at the bottom.

6 Q. Yes. It's in evidence.

7 (Continued on next page)

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Flsdulb5

Alford - cross

1 Q. Do you see the entry for April 2nd, 2013?

2 MR. TURNER: Your Honor, objection.

3 May we have a sidebar, please?

4 THE COURT: All right. Hold on.

5 This is Exhibit 241 in evidence, right?

6 MR. DRATEL: Yes.

7 THE COURT: All right.

8 All right. Let's have a short sidebar but we won't
9 have a long one.

10 (Continued on next page)

11 (Pages 1440 through 1442 sealed by order of the Court)

Flsdulb5

Alford - cross

1 (In open court)

2 THE COURT: All right. You may proceed.

3 BY MR. DRATEL:

4 Q. Let's look at the entry 3/21/2013, the top of that page of
5 Government Exhibit 241, which is in evidence.

6 It says, "Main server was ddosed and taken offline by
7 host." Do you see that?

8 A. Yes.

9 Q. You know that that refers to a denial of service attack on
10 the Silk Road website, correct?

11 MR. TURNER: Objection. Foundation.

12 THE COURT: Hold on.

13 MR. TURNER: Beyond the scope.

14 THE COURT: Why don't you build up the foundation
15 through his knowledge in that regard, Mr. Dratel.

16 BY MR. DRATEL:

17 Q. You are aware that that refers to an attempted denial of
18 service attack on the Silk Road site at or around that time,
19 right?

20 A. That's what the statement says, yes.

21 Q. And if we go down to 3/25/2013, which is just a few entries
22 later, it says that "Server was ddosed, meaning that someone
23 knew the real IP," right?

24 A. That's what it says.

25 Q. And "real IP" meaning the real Internet protocol address of

Flsdulb5

Alford - cross

1 the server, right?

2 A. That is what IP, Internet protocol, means.

3 Q. Right. So this is March of 2013, right?

4 A. Yes.

5 Q. The same time as the Stack Overflow posts that you -- that
6 we saw this morning, right? You know about the Stack Overflow
7 posts, right?

8 MR. TURNER: Objection, foundation.

9 THE COURT: Sustained.

10 Q. You know about the Stack Overflow posts, correct, by
11 Mr. Ulbricht or Frosty, correct, in March of 2013?

12 A. I am aware of it.

13 Q. You have seen them, right?

14 A. Which exact posts are you talking about? The posts, all of
15 them?

16 Q. I am talking about the posts on March 26, 2013 about code
17 and php and curl?

18 A. I recall it being in March. I'm not exactly certain if
19 that is the date, but I remember there was posts around that
20 time.

21 Q. It is also the same time -- withdrawn.

22 Now, you've seen other posts with respect to the
23 denial of service attack on the defendant's computer?

24 MR. TURNER: Objection. Form. Beyond the scope.

25 THE COURT: I will allow this question and we'll see

Flsdulb5

Alford - cross

1 where it goes.

2 A. Can you repeat question?

3 Q. Sure. You've seen other posts on the defendant's laptop
4 referencing this denial of service, other files, other --
5 right, referencing this denial of service?

6 A. I recall seeing other files referencing ddosed.

7 (Pause)

8 Q. I show you what's marked as Defendant's N, as in Nancy. I
9 just ask you it look at it. Tell me if you recognize it.

10 A. I do recognize it.

11 Q. It is from the defendant's laptop, correct?

12 (Pause)

13 A. I don't know if I've seen this statement on the laptop.
14 I've seen it in another.

15 Q. And it's about the denial of service, right, attack?

16 A. Yes.

17 MR. DRATEL: I move it in, your Honor, as Defendant's
18 N.

19 MR. TURNER: We'll stipulate that it was from the
20 computer, your Honor.

21 THE COURT: Any objection?

22 MR. TURNER: We don't think there was a proper
23 foundation laid but we will stipulate to that.

24 THE COURT: Any objection?

25 MR. TURNER: Beyond the scope. Yes.

Flsdulb5

Alford - cross

1 THE COURT: Can I see the document?

2 THE WITNESS: (Handing to the Court)

3 THE COURT: Thank you, sir.

4 (Pause)

5 I will allow it. Defendant's Exhibit N is received.

6 (Defendant's Exhibit N received in evidence)

7 MR. DRATEL: Thank you, your Honor.

8 BY MR. DRATEL:

9 Q. Now, you testified this morning about Government Exhibit
10 130, the handwritten notes, correct?

11 A. I provided testimony about it, yes.

12 Q. I show you, this is --

13 (Handing to the government)

14 Q. I show you what's marked as Defendant's M, for Mary, and
15 ask you if you recognize that?

16 (Pause)

17 A. I don't -- I don't recall this.

18 Q. You reviewed the files on the defendant's laptop, correct?

19 A. Not all the files.

20 Q. How many?

21 A. What was provided to me.

22 Q. Did you prepare exhibits for purposes of this trial? Did
23 you assist in the preparation of exhibits for this trial with
24 the prosecutors?

25 A. Yes.

Flsdulb5

Alford - cross

1 Q. But that one you don't recognize, right?

2 A. No.

3 Q. You don't recognize that document?

4 A. I don't recognizes it, no. I don't have any -- no.

5 Q. I want to go back to 241. And look at the last page,
6 please.

7 And you talked about the poison oak, right, entry?

8 A. Yes.

9 Q. OK. And it also talked about Amelia from OKC, right?

10 A. Yes.

11 Q. OK. I want you to look through 241 in its entirety and
12 point out to me one entry that has anything personal before
13 that entry. Withdrawn.

14 That entry is in September of 2013, right? That's
15 what it says, right?

16 A. The one with Amelia and the poison oak?

17 Q. Yes.

18 A. Yes.

19 Q. Right? It says September 11th to September 18th, right?

20 A. Yes.

21 Q. So I want you to look at the rest of 241 before then. Tell
22 me if you could find a single entry that had anything personal.
23 I am talking about as opposed to Silk Road business.

24 A. May 3rd, 2013?

25 Q. No. I mean the whole thing, starting with March 20, 2013,

Flsdulb5

Alford - cross

1 when this exhibit starts, to the end.

2 MR. TURNER: Objection. The witness is about to
3 answer.

4 THE COURT: He was answering.

5 MR. DRATEL: Oh, I'm sorry.

6 A. Yes. On May 3rd, 2013 it says, "I'm sick."

7 Q. OK. Any others? You don't think that has to do with
8 business -- withdrawn.

9 Let's look at May 3, 2013. It says, "Helping smed
10 fight off attacker. Site is mostly down. I'm sick."

11 Right?

12 A. Yes. Correct.

13 Q. So is it something that you might tell a coworker, that you
14 are sick?

15 THE COURT: Don't speculate as to the state of mind of
16 the author. The objection is sustained.

17 Q. Any others?

18 A. Let me look through.

19 (Pause)

20 Are you saying strictly personal?

21 Q. Yeah.

22 A. What you said before, I guess that's it.

23 Q. Right. That's it, right?

24 A. Yes.

25 Q. Now, you began your investigation -- withdrawn.

Flsdulb5

Alford - cross

1 The Task Force began its investigation as a result of
2 an open letter from two United States senators, Chuck Schumer,
3 and another senator asking that Silk Road be shut down,
4 correct?

5 MR. TURNER: Objection.

6 THE COURT: Sustained.

7 MR. DRATEL: Your Honor, this goes to --

8 THE COURT: It is beyond the scope of this witness'
9 testimony.

10 MR. DRATEL: It goes to a fundamental part --

11 THE COURT: It is beyond the scope of this witness'
12 testimony.

13 BY MR. DRATEL:

14 Q. You pulled out all the stops on this investigation,
15 correct?

16 MR. TURNER: Objection. Form and relevance.

17 THE COURT: Overruled.

18 Q. This is a high-priority investigation, correct?

19 A. It was a high-priority investigation, yes.

20 Q. And one of the things you did was to time it so that when
21 the arrest of Mr. Ulbricht occurred you would be able to also,
22 within a very short frame of time, speak to people who you'd
23 identified as people who knew him, correct?

24 MR. TURNER: Objection. Beyond the scope.

25 THE COURT: Sustained.

Flsdulb5

Alford - cross

1 Q. Now, almost every agency of federal law enforcement was
2 involved in this investigation, correct?

3 A. That is correct.

4 Q. And that caused some friction between agencies, right?

5 MR. TURNER: Objection. Relevancy.

6 THE COURT: Sustained.

7 Q. Everybody wanted -- every agency wanted to get credit for
8 this arrest, correct?

9 MR. TURNER: Objection.

10 THE COURT: Sustained.

11 Q. I want to go back to -- so 333A is -- you can put it up for
12 everybody -- that's something that was provided by Google about
13 logins, correct?

14 A. That is correct.

15 Q. Now, that was part of a larger subpoena production by
16 Google, correct?

17 A. This?

18 Q. Yes.

19 A. Yes.

20 Q. And that showed all the login times during a longer period,
21 correct?

22 A. Yes.

23 Q. And so you reviewed that, correct?

24 A. Yes, I did.

25 Q. And, in fact, there are gaps between login times in certain

Flsdulb5

Alford - cross

1 place, right, sometimes as long as four days, right?

2 A. I would have to see it.

3 (Pause)

4 (Mr. Dratel conferred with Mr. Turner off the record)

5 Q. I show you what we'll mark as Defendant's O for purposes of
6 identification and just ask you to look here and see if that
7 refreshes your recollection that there were gaps of as many as
8 four days in logins by Mr. Ulbricht to his account?

9 THE COURT: And we'll get a paper copy of this at some
10 point?

11 MR. DRATEL: (Indicating affirmatively).

12 THE COURT: Thank you.

13 A. I believe this is a separate subpoena production than the
14 one I'm looking at on this, my exhibit.

15 Q. But does that have Mr. Ulbricht's logins for Google, you
16 know, for his Gmail?

17 A. If that's the logins, yes.

18 MR. DRATEL: Can Mr. Horowitz help him, come up to
19 identify the document, if that helps him?

20 THE COURT: Yes.

21 MR. DRATEL: It is just a MacBook and I don't have a
22 MacBook.

23 (Mr. Horowitz assisted the witness)

24 Q. Does that refresh your recollection that it's login times
25 for Mr. Ulbricht's Gmail or Google account?

Flsdulb5

Alford - cross

1 A. Yes, that looks like the --

2 Q. OK. And there is a four-day -- and does that refresh your
3 recollection that there was a four-day gap, between
4 June 24th and June 28th, just as an example, of logins,
5 according to those records?

6 A. I've never used a Mac. I'm going to have to have someone
7 scroll it down to that particular timeframe.

8 MR. DRATEL: Mr. Horowitz, could you scroll it back to
9 where it was. I'm sorry. The last time I touched the
10 touchscreen the entire document disappeared.

11 (Mr. Horowitz assisted the witness)

12 A. OK. Yes. What is represented there are four-day gaps.

13 Q. Did you check the Gmail account to see whether there were
14 any emails sent by Mr. Ulbricht during that four-day period --

15 A. I can't recall --

16 Q. -- in Gmail?

17 A. I would have to look through it to see those specific
18 dates.

19 Q. You don't recall just offhand, no?

20 A. Those specific dates off the top of my head?

21 Q. Yes.

22 A. No.

23 Q. Do you recall looking to see whether there were emails from
24 Mr. Ulbricht's account on periods where there is no login from
25 the Google records?

Flsdulb5

Alford - cross

1 MR. TURNER: Objection. Beyond the scope and
2 foundation for this witness.

3 THE COURT: Sustained.

4 MR. DRATEL: I have nothing further, then.

5 THE COURT: All right. Thank you.

6 MR. TURNER: Could I have 241 back on the screen.

7 May I approach, your Honor?

8 THE COURT: You may.

9 REDIRECT EXAMINATION

10 BY MR. TURNER:

11 Q. You were asked during cross whether there were any
12 references to personal matters in this log prior to
13 September 2013, right?

14 A. Yes, I was.

15 Q. And you said there was one in May 3rd, 2013.

16 MR. TURNER: Mr. Evert, could you go there.

17 Q. Could you point to where it is? I forget.

18 A. It's towards the bottom.

19 Q. There it is. Pop that up on the screen, Mr. Evert.

20 "May 13, 2013: Helping smed fight off attacker. Site
21 is mostly down. I'm sick."

22 Did you find anything in the defendant's Gmail account
23 indicating the defendant was sick on that date?

24 A. I did.

25 Q. Could you take a look at Government Exhibit 323.

Flsdulb5

Alford - redirect

1 Do you recognize this exhibit?

2 A. Yes.

3 Q. How do you recognize it?

4 A. It's an email that I found in the defendant's Gmail
5 account.

6 MR. TURNER: The government offers Exhibit 323 into
7 evidence.

8 MR. DRATEL: Vayner and hearsay, your Honor.

9 THE COURT: Those two objections are overruled.

10 GX323 is received.

11 (Government's Exhibit 323 received in evidence)

12 MR. TURNER: The email says: "Chat with Casa Bambu"
13 is the subject.

14 "From: Casa Bambu.

15 "Date: May 3, 2013.

16 "To: Ross Ulbricht.

17 "Casa: how are you feeling today?

18 "Me: alot better. I took Nyquil last night and got a
19 good night's sleep

20 "Casa: oh good."

21 No further questions, your Honor.

22 THE COURT: Thank you.

23 Mr. Dratel, anything further for this witness?

24 MR. DRATEL: No, your Honor.

25 THE COURT: All right. Thank you. You may step down,

Flsdulb5

Alford - redirect

1 sir.

2 THE WITNESS: Thank you.

3 (Witness excused)

4 THE COURT: Would the government like to call its next
5 witness, please.

6 MR. HOWARD: Sure. Before the next witness is called,
7 I would like to be read two more core chats that have not yet
8 been read into the record.

9 THE COURT: All right. These are previously received
10 documents?

11 MR. HOWARD: Yes, during Mr. Kiernan's testimony.

12 THE COURT: All right.

13 MR. TURNER: Your Honor, actually, while we are
14 waiting, could I just make sure we've gotten some of the
15 stipulations that were read in into evidence. I'm not sure we
16 ever formally offered them.

17 THE COURT: Yes. You also had two from this morning
18 that you were going to offer now.

19 MR. TURNER: Right, and I have them now.

20 THE COURT: All right.

21 MR. TURNER: I believe I've read all of the Google
22 stipulation, which has been marked as Government Exhibit 803.
23 I want to make sure that is entered in evidence.

24 THE COURT: I don't have 803. Do you have 803, Joe?

25 (The Court conferred with the Deputy Clerk)

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1 THE COURT: You offered the exhibit contained in 803
2 but not 803 itself.

3 MR. TURNER: We would like to offer that at this time.

4 THE COURT: All right. Mr. Dratel, received by
5 stipulation?

6 MR. DRATEL: Yes.

7 THE COURT: All right.

8 (Government's Exhibit 803 received in evidence)

9 MR. TURNER: On the Facebook stipulation that's been
10 marked as Government's Exhibit 10, there is one paragraph that
11 we had not read into evidence. I could read it now briefly.

12 THE COURT: Government Exhibit 10?

13 MR. TURNER: 810, your Honor.

14 THE COURT: I'm sorry. 810. All right.

15 MR. TURNER: Paragraphs 1 through 3 have already been
16 read.

17 Paragraph 4 is: "Government Exhibit 331, in
18 particular, reflects certain messages between the users and
19 another Facebook user, Allison, on February 8, 2013. Each
20 message reflects the username of the recipient of the message,
21 the username of the author of the message, the date and time
22 the message was sent, whether the message was ever deleted from
23 the Ross Ulbricht account in the body of the message."

24 That is 810, and the government offers that
25 stipulation, as well, into evidence.

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1 THE COURT: Is that a stipulation, Mr. Dratel, of
2 yours?

3 MR. DRATEL: Yes.

4 THE COURT: GX810 is received.

5 (Government's Exhibit 810 received in evidence)

6 MR. TURNER: Government Exhibit 806A is another
7 stipulation concerning the USAA records.

8 And the parties stipulate there that: If called as a
9 witness, a custodian of records of USAA Federal Savings Bank
10 would testify that I'm employed by USAA Federal Savings Bank as
11 a custodian of records. I am familiar with records created and
12 maintained by USAA Federal Savings Bank. The following records
13 were kept in the course of regularly conducted business
14 activity of USAA Federal Savings Bank, were made at or near the
15 time of occurrence of the matters set forth in the records by,
16 or from information transmitted by, a person with knowledge of
17 those matters, and were records that were made as a regular
18 practice of USAA Federal Savings Bank activity.

19 Government Exhibit 806 consists of a bank statement
20 dated -- excuse me, bank statement from an account maintained
21 at USAA Federal Savings Bank by Ross W. Ulbricht, date of birth
22 March 27, 1984, registered to the address
23 Rossulbricht@gmail.com.

24 And that was a stipulation that goes back to 806. The
25 government stipulation is marked 806A. So we would want to

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1 make sure both of those are admitted into evidence.

2 THE COURT: 806 was previously received.

3 806A was a stipulation, Mr. Dratel?

4 MR. DRATEL: Yes.

5 THE COURT: All right. That is received as well,
6 806A.

7 (Government's Exhibit 806A received in evidence)

8 MR. TURNER: Lastly, the PayPal stipulation reads
9 that: If called as a witness, a custodian of records of
10 PayPal, Incorporated would testify that I'm employed by PayPal,
11 Inc. as a custodian of records. I am familiar with records
12 created and maintained by PayPal, Inc. The following records
13 were kept in the course of regularly conducted business
14 activity of PayPal, Inc., were made at or near the time of
15 occurrence of the matters set forth in the records by, or from
16 information transmitted by, a person with knowledge of those
17 matters, and are records that were made as a regular practice
18 of PayPal in its activities.

19 Government Exhibit 808 consists of records from PayPal
20 account registered to Ross Ulbricht, date of birth March 27,
21 1984, registered to the email address rossulbricht@gmail.com.

22 Pages 1 and 2 of the exhibit contain subscriber
23 information from the PayPal account maintained by PayPal, Inc.,
24 and the remaining pages of the exhibit contain a transaction
25 log of the account indicating, among other things, the date,

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1 time and amount of each transaction, and the balance of the
2 account following the transaction reflected in the
3 second-to-last column, labeled "Balance."

4 The government asks that Exhibit 808 be admitted into
5 evidence, your Honor.

6 THE COURT: The stipulation number is what?

7 MR. TURNER: 808A. Excuse me.

8 THE COURT: 808A is received. 808 was previously
9 received.

10 (Government's Exhibit 808A received in evidence)

11 MR. TURNER: That is all I have.

12 THE COURT: All right. Thank you.

13 Mr. Howard.

14 MR. HOWARD: Yes.

15 Ms. Rosen, could you please publish Government Exhibit
16 227E, please.

17 Start with pages 54 to 56 of a 337-page chat log,
18 starting on page number 2012-09-23:

19 "Myself: oh wait it's the middle of the night. I got a
20 request from vice magazing to do an interview, btw. I told them
21 I'd talk to my PR consultant first :) Here's what they've
22 written:

23 "Dear the Dread Pirate Roberts,

24 "I am acting as an intermediary for Hamilton Morris of
25 Vice Magazine. He would like to do an interview with the Dread

F1sdulb5

1 Pirate Roberts, or the owners of Silk Road. I'm sure he will be
2 amenable to using a secure chat solution, such as OTR, PGP,
3 torchat or CryptoCat.

4 "You can Google Hamilton Morris to see some of his
5 work. He is very smart and respectable and I'm sure he would
6 only have excellent questions."

7 Skipping to the last paragraph.

8 "If you are willing to set up such an interview please
9 let me know. I told him I would do him the favor of trying to
10 get him in contact," and signed "ageis."

11 "cimon: Dude, God is putting on a lightning storm the
12 likes of which I've never seen. Can't even hear myself think
13 over the constant thunder. I'm amazed I've still got power.

14 "myself: sounds awesome. Don't let your computer fry

15 "cimon: I have two spares ;)

16 "Nobody has ever regretted not doing an interview;
17 lots of folks have regretted doing one.

18 "A problem I have with any type of interview is it
19 ties you down, or could, in areas you want to remain loose. Are
20 there one or more of you. Are you the guy who started the site,
21 or the third or forth operator. Problem is areas where we want
22 misdirection are the hardest to do, as pride makes yhou want to
23 say yeah, I started it, nyah, nyah... but security says you
24 should claim otherwise. It get's tough, and guaranteed at least
25 one or more major mistake will be made during the process."

F1sdulb5

1 Ms. Rosen, could you please publish Government Exhibit
2 227H, please.

3 From pages 106 to 109 of a 337-page chat log, dated
4 October 29, 2012:

5 "cimon: on btctalk, there are folks who when you just
6 started out save you shroom packs. Couplpe that with educatoin
7 and empoloyment I know - yer one of 12 folks in the world. Easy
8 odds.

9 "Sorry, don't mean to worry ya - I'm making a point
10 that I have 10 times more on D A - if needed, I can lay my
11 finger on him in weeks, easy. He leaked more info like a seive
12 than you did. Also, keep in mind I've shipped shit to his prev
13 addy. Not hard to track from there.

14 "and my point is I want to find him, and have a chat -
15 if it's ok with you.

16 "myself: go ahead

17 "cimon: Just make sure he's on side, is all.

18 "myself: I wouldn't think the info you have would
19 narrow me down to 12

20 "cimon: nothing bad will happen - it's just talk

21 "(04:29:53) Dipper: I wouldn't think the info you have
22 would narrow me down to 12

23 "Bet? ;)

24 "myself: just don't spook him too bad. I wouldn't want
25 him freaking out and attacking you or something

F1sdulb5

1 "where are you getting the number 12? do you have a
2 list?

3 "cimon: naw - if anything I'm gonna see if I can help
4 him. I'm sure he's stressted, scared, and just a little bit
5 fucked up in general.

6 "12's an estimate - could be as high - but no higher -
7 than 10, and no less than 8

8 "myself: I call bs

9 "cimon: Well, unless you lied in the early days, yer
10 right

11 "myself: not sure what the bet would be or how to
12 settle it, but I'd take it

13 "cimon: but if you didn't - and I don't think DA did -
14 then my good memeory serves me well

15 "myself: from what I remember, you know my educational
16 background (sort of), you can infer my gender, age, race, etc.
17 and you know where I was a year and a half ago roughly when I
18 started the site

19 "myself: does that really narrow me down to 12 people?

20 "you could estimate my travels a bit based on timezone

21 "cimon: yeah - I'm not looking for you - but you've
22 left enough hints - where you went to school - when you started
23 to work and left - info from folks on btctalk who posted images
24 of postmarks from shrooms you sent - yeah - I could narrow it
25 down quick.

F1sdulb5

1 "myself: where i went to school? I don't remember
2 revealing anything like that

3 "cimon: dude, I'm not trying to worry you - I'm making
4 the point that DA slippd way more shit than you.

5 "myself: you are worrying me! won't you ease my mind
6 and tell me what you think you know?

7 "cimon: I mean, yer fine, how many experimental
8 physicists quit to sell shrooms outta ndl anyways, eh.

9 "myself: shit, you know about the national dodgeball
10 league!

11 "my cover is blown

12 "cimon: goddammit! I was making a point, not trying to
13 worry you. Do I think I could find you quickly - absolutley.
14 Would I - what the fuck would I want to do that for - then I
15 have info folks would kill me for. I'd rather not know - the
16 point is it's easy to let info out, and DA did, and I 'll spend
17 \$ to follow it up. Shit, if I really wanted to just see you,
18 I'd just ask.

19 "myself: it's ok man, just never thought you were
20 capable of that

21 "What's ndl?

22 "Cimon: You know - I post up, and give you shitloads
23 of info that could if you tried just a bit (fuck, Plural of
24 Mongoose alone should do it!) that you could determine exactly
25 who I am. I did that to make you feel comfortable.

F1sdulb5

1 "Myself: i know

2 "Cimon: If you can't find me in 10 days, you've not
3 read my shit.

4 "Myself: it's not like I don't trust you dude

5 "Cimon: That's my way of trying to make you comfy -
6 there ain't much more I can do.

7 "Dude, you so don't trust me - I know you want to, but
8 it's not there yet. I'm doing my best to make it easy for you.

9 "Myself: i guess there are different levels

10 "Cimon: Fuck, I scare you. Shit, I scare me. We gotta
11 work together

12 "Myself: but I beleive you when you say you wouldn't
13 look for me. But there is a difference between willing and
14 able. Thats all

15 "Cimon: The reason I don't look for you is that leaves
16 a trail - but I'm pretty confident if I did, I'd find you. And
17 that's just a fact.

18 "Myself: didn't think you were able before, but I
19 guess you are

20 "Cimon: But, I'd rather some day you came to see me.

21 "Myself: I will. Or I'll invite you somewhere

22 "Shit, now I'm worried you think I'm being, I dunno...

23 "Myself: we'll get to embrace, and shoot the shit, and
24 brainstorm

25 "Cimon: Fuck, do I need to knock on yer door and NOT

F1sdulb5

1 shoot ya to make you trust me? Tell me.

2 "Myself: lol

3 "Cimon: heh

4 "Myself: yer fine... just me processing info. I guess
5 I revealed too much. Selling was my first mistake

6 "Cimon: Now, back on track - do you have a prob with
7 me having one of my folks tap on DA's door, and having a talk

8 "Myself: nope, go for it

9 "Cimon: yeah - there are records on reddit, and
10 bitcointalk, where folks have scans of your shipments - that
11 was the key. But great shrooms, apparently!

12 "myself: they were fucking awesome

13 "cimon: but postmarks narrow it down. With everything
14 else, yeah, I could find ya\

15 "but that said, no one else knows, no one else ever
16 will, and I won't do that.

17 "myself: thank you

18 "cimon: and further to that, the DPR thing is great,
19 and we need to make at least one publid set of statements that
20 indicates that the old admin is long gone, and dpr is now in
21 charge. Keep in mind the movie, and how dpr can change from one
22 time to the next. I've got yer back.

23 "myself: yea, I was thinking the same thing

24 "have a back story for him

25 "cimon: I suggested DPR when I first realized I could

F1sdulb5

1 track you. I don't give a shit who you are, and it's to my and
2 everyone's advantage no one else can.

3 "DPR by it's very nature indicates a rotating command.
4 We'll play that."

5 THE COURT: Mr. Howard, would the government like to
6 call its next witness.

7 MR. HOWARD: Yes, your Honor. We would now like to
8 call Special Agent Dylan Critten.

9 THE COURT: All right. Dylan Critten to the stand,
10 please.

11 THE CLERK: Please raise your right hand.

12 DYLAN CRITTEN,

13 called as a witness by the government,

14 having been duly sworn, testified as follows:

15 THE CLERK: Please state and spell your full name for
16 the record.

17 THE WITNESS: My name is Dylan Critten. D-y-l-a-n,
18 last name Critten, C-r-i-t-t-e-n.

19 THE CLERK: Thank you.

20 THE COURT: All right. Mr. Critten, please be seated,
21 sir, and it will be important for you to pull yourself up and
22 adjust the mic however is most comfortable for you to get a
23 clear and direct sound.

24 Mr. Howard, you may proceed, sir.

25 MR. HOWARD: Thank you, your Honor.

F1sdulb5

1 DIRECT EXAMINATION

2 BY MR. HOWARD:

3 Q. Good afternoon, Special Agent Critten.

4 A. Good afternoon.

5 Q. Who do you work for?

6 A. I work for Homeland Security Investigations.

7 Q. And how long have you worked there?

8 A. A little over five years.

9 Q. And what is your position there?

10 A. I'm a special agent assigned with Criminal Investigations.

11 Q. And where are you based?

12 A. I'm based in San Francisco, California.

13 Q. Are you assigned to a particular squad?

14 A. I'm assigned to a Document and Benefit Fraud Task Force.

15 Q. And what are your responsibilities and duties on that Task
16 Force?

17 A. We investigate criminal activity related to counterfeit
18 documents, identity theft and other general fraud.

19 MR. HOWARD: Your Honor, may I approach the witness?

20 THE COURT: You may.

21 BY MR. HOWARD:

22 Q. I have just handed you what's been marked for
23 identification purposes as Government Exhibit 400. Do you
24 recognize what this is?

25 A. I do.

Flsdulb5

Critten - direct

1 Q. And what is this?

2 A. These are nine counterfeit driver license identity
3 documents from six different states and three different
4 countries.

5 Q. And how are you familiar with them?

6 A. I'm familiar with these because they were contained in a
7 package that was shipped from Vancouver, Canada, into the
8 United States, and it was intercepted at a mail facility in San
9 Francisco and forwarded to Investigations.

10 Q. Who is depicted on the phase of the IDs?

11 A. There are two different -- what I believe to be two
12 different photos on these, one bearded and one non-bearded, but
13 I believe that individual to be Mr. Ulbricht.

14 MR. HOWARD: The government offers Government Exhibit
15 400.

16 MR. DRATEL: No objection, your Honor.

17 THE COURT: Received.

18 (Government's Exhibit 400 received in evidence)

19 MR. HOWARD: Your Honor, may I approach the witness?

20 THE COURT: You may.

21 MR. HOWARD: May I publish this exhibit to the jury?

22 THE COURT: You may.

23 BY MR. HOWARD:

24 Q. So when, approximately, were these IDs seized by CBP?

25 A. Approximately in the neighborhood of July 10th of 2013.

Flsdulb5

Critten - direct

1 Q. And what, if anything, did you do to investigate these
2 identification documents once you received them?

3 A. I ran basic records checks and a few other checks, and
4 myself and another agent went to the residence where they were
5 postmarked to.

6 Q. What did you discover after running the record checks you
7 just described?

8 A. Each of the at least as far as the six state identification
9 documents were negative. They did not come back to a valid ID
10 that was issued by any of those six states. I ran record
11 checks on each of the individuals, which all came back negative
12 for any kind of identity.

13 Q. Could you please flip in your binder to what has been
14 marked for identification purposes as Government Exhibit 402,
15 please.

16 Do you recognize what this is?

17 A. Yes. This is a photo of those same nine documents.

18 Q. Did you take this photograph?

19 A. I did not. Customs and Border Protection took this photo
20 and forwarded it to us from the mail facility.

21 Q. Does this photograph fairly and accurately depict the front
22 of these identification documents?

23 A. It does.

24 MR. HOWARD: The government offers Government Exhibit
25 402.

Flsdulb5

Critten - direct

1 MR. DRATEL: No objection.

2 THE COURT: Received.

3 (Government's Exhibit 402 received in evidence)

4 MR. HOWARD: Now, Ms. Rosen, could you please publish
5 Government Exhibit 402.

6 Q. Special Agent Critten, could you please indicate where
7 these driver licenses appear to be issued from?

8 A. They're purported to be issued from six different states,
9 including New York State, Colorado, Florida, California, Texas,
10 and South Carolina.

11 Q. And how are the names on these IDs, are they the same name
12 or different names?

13 A. Each of the nine identification documents has nine
14 individual names. So there are nine separate names.

15 Q. Is Ross Ulbricht's name on any of those identification
16 documents?

17 A. Not his name, no.

18 Q. How about the date of birth, how does that compare on these
19 nine documents?

20 A. The date of birth is the exact -- I believe to be the exact
21 same as Mr. Ulbricht.

22 Q. What is the date of birth?

23 A. 3/27 of 1984 on all nine documents.

24 Q. Would you please flip in your binder to what has been
25 marked for identification purposes as Government Exhibit 401.

Flsdulb5

Critten - direct

1 Do you recognize what this is?

2 A. I do. This is a picture of the postal envelope that was
3 postmarked and said to be delivered to a San Francisco,
4 California address.

5 Q. And what was contained in that package?

6 A. The nine counterfeit identity document driver licenses.

7 Q. Did you take this photograph?

8 A. I did not. Customs and Border Protection did.

9 Q. Does this photograph fairly and accurately depict the
10 packaging that contained those IDs?

11 A. It does.

12 MR. HOWARD: The government offers Government Exhibit
13 401.

14 MR. DRATEL: No objection.

15 THE COURT: Received.

16 (Government's Exhibit 401 received in evidence)

17 MR. HOWARD: Ms. Rosen, could you please publish it.

18 Q. Special Agent Critten, what is the name of the individual
19 who is listed as to receive the package?

20 A. The package was addressed to Andrew Ford.

21 Q. And where is the address -- what is the address that is
22 listed on the packaging?

23 A. The address for delivery is 2260 15th Avenue in San
24 Francisco, California.

25 Q. Are you familiar with that address in San Francisco?

Flsdulb5

Critten - direct

1 A. I am. Myself and another agent visited that address soon
2 after.

3 Q. And when was that, approximately?

4 A. Approximately July 26th of 2013.

5 Q. And how many -- you said you went with one other agent to
6 that location?

7 A. Yes.

8 Q. What happened after you arrived at the location?

9 A. Myself and another agent arrived at the location. We went
10 directly to the door. As I approached the door to knock on it,
11 I saw an individual in the hallway who I immediately recognized
12 from the photographs on the fake IDs. It was a big -- the
13 front door was a big glass door, and so as I knocked on the
14 door that individual was already approaching the door to answer
15 the door.

16 Q. Do you see that individual in the courtroom today?

17 A. Yes, I do.

18 Q. And could you please point him out and indicate what he's
19 wearing?

20 A. He's wearing a blue collared shirt.

21 Q. And which table is he sitting at?

22 A. At the second table.

23 MR. HOWARD: Could the record please reflect that the
24 witness has identified the defendant, please?

25 THE COURT: So reflected.

Flsdulb5

Critten - direct

1 BY MR. HOWARD:

2 Q. So what happened after you observed the defendant on the
3 other side of the glass door?

4 A. He came to the door. And I immediately, myself and the
5 agent that I was with, we showed Mr. Ulbricht our
6 government-issued credentials and introduced ourselves as
7 government agents who work for Homeland Security
8 Investigations.

9 Q. And what happened after you identified yourselves?

10 A. I asked Mr. Ulbricht if he would be willing to speak to us
11 regarding our investigations. He responded in the affirmative,
12 and he stepped out onto the front porch to speak with us.

13 Q. And what was the first thing that happened after he stepped
14 out onto the front porch?

15 A. So as he stepped out, the first thing I showed him was an
16 8-by-10 photo of one of the documents. It was a photo of the
17 California driver license document. And --

18 Q. And how did he react? What could you observe about his
19 demeanor when he observed the documents?

20 MR. DRATEL: Objection.

21 THE COURT: Why don't you restate that so it is one
22 question.

23 Q. What were you able to observe about the defendant after you
24 provided him -- you showed him the photograph of the ID
25 document?

Flsdulb5

Critten - direct

1 A. I observed that he became visibly nervous.

2 MR. DRATEL: Objection.

3 THE COURT: Overruled.

4 MR. DRATEL: I move to strike.

5 THE COURT: Denied.

6 Q. And what happened next?

7 A. So we directly asked him if he had made a purchase of fake
8 identity documents. And we also let him know that we were not
9 there to investigate him but we wanted to solicit his support
10 in our investigation of a fake document vendor which could have
11 sent the documents from Canada.

12 Q. Was that the purpose of your investigation on that day?

13 A. It was.

14 Q. At that time were you familiar with Silk Road?

15 A. No.

16 Q. So what happened after you informed the defendant that you
17 weren't there to investigate him for something?

18 A. After that he was willing to speak to us and he made
19 general statements, but he was unwilling to admit whether or
20 not he had made any sort of purchase of fake identity
21 documents. He didn't want to incriminate himself.

22 Q. So what happened after that? After he indicated that he
23 didn't want to make any statements about himself, what did you
24 do?

25 A. We explained that our purpose was not only to investigate

Flsdulb5

Critten - direct

1 the fraudulent document vendor but also to make sure that the
2 recipient -- in this case the recipient of nine fake IDs -- was
3 not a fugitive. There was nothing else, nothing further. So
4 we asked that we could identify him and make sure he was not a
5 fugitive before we -- before we departed the location.

6 Q. We'll circle back to that later.

7 A. OK.

8 Q. But did you have any discussions about where the IDs could
9 have come from?

10 A. Yes. At a later point in time Mr. Ulbricht made a
11 statement that hypothetically an individual could purchase
12 anything they wanted -- fake IDs, drugs, or generally anything
13 illegal on the Tor browser, using the Tor browser to access the
14 Silk Road website.

15 Q. At the time had you heard of Silk Road before?

16 A. No, I had not.

17 Q. At the time had you heard of the Tor browser before?

18 A. I had not.

19 Q. Now, how did you come to learn the defendant's name?

20 A. Mr. Ulbricht went back into the house and retrieved his --
21 what I believe to be his legitimate Texas driver license and
22 then returned to the front porch and showed it to me.

23 Q. And did you have any discussions with the defendant about
24 his living arrangements at the time?

25 A. Yes. So the name on the identity document that

Flsdulb5

Critten - direct

1 Mr. Ulbricht gave us was his true name, Ross Ulbricht. And we
2 explained to him that we were going to have to speak to his
3 roommates regarding the situation because we wanted to get a
4 bigger picture of what was going on. Since he was unwilling to
5 answer any questions regarding why he might have purchased the
6 documents, we would need to do further inquiry and speak to the
7 roommates. It was at that time that he informed us that that
8 might be an issue because if we asked his roommates about Ross,
9 they wouldn't know what we were talking about because his
10 roommates only knew him by his name Josh.

11 Q. Did you have any discussions with the defendant about how
12 long he had been living there at that location?

13 A. Maybe not the exact time he had been living there, but he
14 said -- I don't recall the specific amount of time, but he said
15 he had found the place on Craigslist and he had sublet it from
16 two individuals who were traveling musicians.

17 Q. Did he discuss the manner in which he paid for the rental?

18 A. He paid them a thousand dollars each month using cash.

19 Q. And he lived under the fake name Josh?

20 A. Yes.

21 MR. HOWARD: No further questions.

22 THE COURT: All right. Let's take our mid-afternoon
23 break, and then we'll come back and Mr. Dratel can commence his
24 cross-examination of this witness.

25 I want to remind you folks again -- and I know I say

Flsdulb5

Critten - direct

1 this all the time, but as the days go on I want to make sure
2 you don't lapse into it -- not to talk to each other or anybody
3 else about the case. Thank you.

4 THE CLERK: All rise as the jury leaves.

5 (Continued on next page)

Flsdulb5

Critten - direct

1 (Jury not present)

2 THE COURT: You can step down and take a break as
3 well.

4 THE WITNESS: Thank you, your Honor.

5 (Witness not present)

6 THE COURT: All right. Ladies and gentlemen, let's
7 take our own break. I've got something that I need to do in
8 the other room.

9 Is there anything that we need to do before we resume?
10 Normally, I would ask you folks if there was anything you
11 wanted to raise. If there is, then I will come back out before
12 the jury is ready.

13 MR. TURNER: Not from the government, your Honor.

14 MR. DRATEL: I may, your Honor, with respect to some
15 of the cross.

16 THE COURT: All right. So I will have my deputy check
17 with you, Mr. Dratel, and so we will start a couple of minutes
18 early. We will take a brief break right now. Thank you.

19 THE CLERK: All rise.

20 (Recess)

21 (Continued on next page)

Flsgulb6

Critten - cross

(In open court; jury not present)

THE COURT: Let's all be seated.

Mr. Dratel.

MR. DRATEL: Yes, your Honor. With respect to cross-examination of Agent Alford, I'll just start from the end. With respect to the document that I was cross-examining him about, which was a government exhibit and that was put in by the government to suggest that those were accurate reflections of login times, and my cross was designed to show that those are not necessarily accurate reflections of login times and it was directly related to the subject of his direct examination and the objection was sustained.

With respect to some other aspects, the question of the letter from Senator Schumer and the whole inception of the investigation and its length and its ultimate conclusion are bias issues, whether it's for this witness or the investigation as a whole, those are clear bias issues. And again, objections were sustained. And there's a whole series of questions that are relevant to that, in addition to the scope of the investigation as well and what was going on with the investigation.

The bitcoin aspect of it was part of his investigation of Mr. Ulbricht and it goes hand-in-hand with all of the other aspects of it that we talked about earlier. And the whole point about the Silk Road servers, which was sustained as well,

Flsgulb6

Critten - cross

1 is also related to the question of bias and the way the
2 investigation unfolded and ultimately what happened with it.

3 THE COURT: Thank you.

4 Mr. Turner.

5 MR. TURNER: Your Honor, on the IP logs, so those were
6 admitted pursuant to a stipulation between the parties. It
7 says it's a true and accurate copy of subscriber information
8 and the login times. In terms of whether the methods that
9 Google uses to produce those records are reliable, that's
10 beyond this witness' ken. They can call a witness from Google,
11 I suppose, to call that into question.

12 I think the defendant's mistaken to believe that every
13 time there's a login into an email account there's necessarily
14 going to be an email reflected in that account. You can login
15 and check your email and not actually send an email, and Google
16 can log that information, so I don't think it really shows
17 anything in any event.

18 The bias, I mean, the question is how is this witness
19 biased against the defendant because of the fact that the
20 investigation of Silk Road started by the federal government
21 generally -- I'm not saying this is true, but this was the
22 allegation -- started because of a letter submitted by Chuck
23 Schumer. The connection isn't there.

24 Silk Road servers, the witness testified about nothing
25 related to evidence from the Silk Road servers during his

Flsgulb6

Critten - cross

1 direct and the same with the bitcoins.

2 MR. DRATEL: Also, your Honor, I left out one thing
3 also with respect to the competition among the agencies
4 involved: This is a witness who in his 3500 material said
5 there has been a lot of interagency dust-ups and big case/big
6 problems. He complained about the FBI not sharing information.
7 There was an issue about him not getting to sign the criminal
8 complaint and it had to be explained to him that it was not a
9 slap in the face but that the FBI was taking control; the
10 question of what would happen to the bitcoins; and the question
11 of people getting credit for other people's work. And why is
12 that relevant?

13 It's relevant for the whole reason is this: Senator
14 Schumer and another senator issued a public letter that they
15 want Silk Road investigated and taken down. That puts pressure
16 on law enforcement to do it. It makes it a high priority
17 investigation. It makes it something that they want to do as
18 quickly as possible; yet two and-a-half years later almost,
19 no -- yes, almost two and-a-half years later Silk Road is still
20 operating. It's operating at a time which for three months the
21 government can pull the plug on the server at any moment.
22 There is tremendous motivation and pressure to find a suspect
23 as quickly as possible and arrest them regardless of the
24 merits.

25 THE COURT: I think you folks have made your record.

Flsgulb6

Critten - cross

1 I think, Mr. Dratel, whether you have a theory of the case is a
2 different issue as to whether or not there is something that is
3 within the scope of the direct for a particular witness.

4 What I hear in a lot of what you are attempting to do
5 is a theory of the case, and there are certain witnesses where
6 there may be areas opened up and there may be certain witnesses
7 where it's not opened up, and we will proceed with each witness
8 and each question as it comes.

9 MR. DRATEL: Just one. The only way I can get my
10 theory in is through witnesses. It's in this witness'
11 knowledge and it's biased.

12 THE COURT: You and I disagree. I think that you've
13 got a view of the rules of evidence that is, frankly, rather
14 extraordinary for a person who is I know as intellectual as
15 you. I can't decide whether or not you actually believe that
16 you're right or whether or not you are just taking the position
17 as a zealous advocate. In either event, it is my job to apply
18 the rules.

19 I did, in fact, make an error in one of my rulings in
20 the last session and that was to allow the witness, Mr. Alford,
21 to testify that at one point in time he had thought there had
22 been an original DPR. That was actually an error. I thought
23 it was going to connect up to something. It did not. We'll
24 have to decide what to do with that at the appropriate time.

25 I believe the jury is ready for us so let's go ahead.

Flsgulb6

Critten - cross

1 MR. DRATEL: There's one factual thing I need to
2 correct with respect to what Mr. Turner said about Google. He
3 misses the point entirely, which is not the fact that there
4 is -- it's the fact that there are gaps but there are emails in
5 between those gaps which shows that these records don't
6 necessarily reflect accurately when someone's logged onto their
7 Google account.

8 THE COURT: I think the point about Google being the
9 appropriate witness for that testimony is perhaps apposite to
10 that as well.

11 MR. DRATEL: But it's apparent from the documents
12 themselves.

13 THE COURT: Then you don't need the witness.
14 Go ahead and bring out the jury. Let's get the
15 witness back on the stand.

16 Who does the government have next on-deck?

17 MR. TURNER: Michael Duch.

18 THE COURT: Thank you.

19 (Continued on next page)
20
21
22
23
24
25

Flsgulb6

Critten - cross

1 (In open court; jury present)

2 THE COURT: Mr. Dratel, you may proceed with
3 cross-examination.

4 MR. DRATEL: Thank you, your Honor.

5 CROSS-EXAMINATION

6 BY MR. DRATEL:

7 Q. Agent Critten, with respect to Government Exhibit 401,
8 which was the shot of the envelope, right, the photo of the
9 envelope?

10 A. Yes.

11 Q. And that showed that the return address on the package was
12 Vancouver in Canada, is that correct?

13 A. The "from," yes.

14 Q. And you said when you approached Mr. Ulbricht, he agreed to
15 speak to the agent -- to you, right?

16 A. Yes.

17 Q. He didn't have to speak to you, right? You didn't have a
18 subpoena?

19 A. No. It was completely voluntary.

20 Q. And the interview lasted about what? Ten minutes would you
21 say?

22 A. Approximately, yes.

23 Q. Now, he gave you, Mr. Ulbricht produced for you his Texas
24 driver's license, correct?

25 A. Yes.

Flsgulb6

Critten - cross

1 Q. And as far as you could tell, that was an authentic
2 driver's license?

3 A. Yeah, I did a record check before I left the premises and
4 it was verified through both the systems and the photo.

5 Q. And you said that Mr. Ulbricht told you that he had found
6 the apartment that he was in on craigslist, right?

7 A. Yes. It was a house.

8 Q. A house, but his room, or wherever he resided?

9 A. Correct.

10 Q. There were two other tenants aside from him?

11 A. That I learned of; yes.

12 Q. And he told you that they all knew him by the name Josh,
13 right?

14 A. Yes.

15 Q. And he said I think that the rent was paid \$1,000 a month
16 in cash?

17 A. Yes.

18 Q. Now, he also told you that he was moving within a couple of
19 weeks, right?

20 A. He did.

21 Q. And he told you he was a currency trader, correct?

22 A. He did.

23 Q. Now, when you explained to Mr. Ulbricht that you weren't
24 there to arrest him but were looking to investigate the sources
25 of and vendors for fake identification documents, you told him

Flsgulb6

Critten - cross

1 that he could speak in a hypothetical, correct?

2 A. I told him if you felt more comfortable, he could speak in
3 a hypothetical; yes.

4 Q. So that's when he told you hypothetically someone can go on
5 to the Tor browser and to the Silk Road site, correct?

6 A. Yes.

7 Q. And you say you hadn't heard of Silk Road before then?

8 A. Not before then, no.

9 Q. So there was nothing from the packaging or anything else
10 that would suggest Silk Road?

11 A. Not at all.

12 Q. Now, Mr. Ulbricht also gave you an email address, correct?

13 A. He did.

14 Q. And it was fractalform@tormail.org, right?

15 A. Correct.

16 Q. And you replied "very anonymous," right?

17 A. I don't recall replying.

18 Q. And you also did a criminal history check, correct?

19 A. I did.

20 Q. And that came back with nothing for Mr. Ulbricht, right?

21 MR. HOWARD: Objection.

22 THE COURT: Sustained.

23 Q. You entered the information in the TECS system from your
24 interview, correct?

25 A. I entered my report into the TECS system, yes.

Flsgulb6

Critten - cross

1 Q. And that would make it accessible to law enforcement around
2 the country if they were looking for something about
3 Mr. Ulbricht?

4 A. Yes.

5 MR. DRATEL: I have nothing further. Thank you.

6 THE COURT: Mr. Howard, anything further from you?

7 MR. HOWARD: Nothing from the government, your Honor.

8 THE COURT: Thank you. You may step down, sir.

9 (Witness excused)

10 THE COURT: Would the government like to call its next
11 witness?

12 MR. TURNER: The government calls Michael Duch to the
13 stand.

14 THE COURT: Mr. Duch to the stand, please.

15 (Witness sworn)

16 THE COURT: Mr. Duch, it will be important to pull up
17 your chair and adjust the microphone how ever it's comfortable
18 for you so that you can speak clearly into the mic.

19 THE WITNESS: Thank you very much so much.

20 THE COURT: Mr. Turner, you may proceed, sir.

21 MICHAEL DUCH,

22 called as a witness by the Government,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. TURNER:

Flsgulb6

Duch - direct

1 Q. Good afternoon, Mr. Duch.

2 A. Good afternoon, Mr. Turner.

3 Q. How old are you?

4 A. I'm 40 years old.

5 Q. And where did you grow up?

6 A. I grew up in Orange County, New York.

7 Q. And what's your educational background?

8 A. I graduated high school with a Regents diploma. I also

9 attended three years of college. I went to Orange County

10 Community College, Baruch College here in New York City, as

11 well as Brookdale College out in New Jersey. I also attended

12 or and participated in a variety of technical education courses

13 for computers.

14 Q. And what occupation have you held most of your life?

15 A. I've been a computer consultant. I've worked in networking

16 in security.

17 Q. In 2012, how were you employed?

18 A. I was self-employed. I owned my own business.

19 Q. What kind of business was it?

20 A. It was a computer consulting company, again, focusing on

21 networking and security.

22 Q. The name of the company?

23 A. The name of the company is called COMM-LAN.

24 Q. And what kinds of IT jobs did your company do?

25 A. It was mainly servicing business-to-business type stuff, a

Flsgulb6

Duch - direct

1 variety of different doctor's offices, surgical centers, law
2 firms, sometimes do residential work as well. If some of the
3 clients liked the services that we provided, we also did work
4 for some of their home stuff as well.

5 Q. How much money were you making per year in about 2012?

6 A. Um, about \$75,000 a year after all expenses were paid.

7 Q. You're in prisoner's clothing today; is that right?

8 A. That's correct.

9 Q. Are you currently in jail?

10 A. Yes, I am.

11 Q. When were you arrested?

12 A. I was arrested in October of 2013.

13 Q. Where were you arrested?

14 A. Outside of a post office in Monroe, New York.

15 Q. What were you doing at the post office in Monroe, New York?

16 A. I was attempting to deliver at the post office packages of
17 heroin.

18 Q. How many packages were you trying to mail out?

19 A. Somewhere between 20 and 25.

20 Q. Why were you mailing out packages of heroin from the post
21 office?

22 A. Well, I was involved with Silk Road. I was a seller of
23 drugs on Silk Road and that was one of the -- that was the
24 method that I used to deliver those drugs.

25 Q. I'm going to ask you some questions about your activity on

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Duch - direct

1 Silk Road in a minute, but let me first ask, after you were
2 arrested, did you cooperate with authorities?

3 A. Yes, I did.

4 Q. And the assistance you provided, was that initially about
5 Silk Road or something else?

6 A. It was some about Silk Road, but it also -- but I also
7 helped with a control buy with one of my suppliers.

8 Q. So what specific crime -- did you end up pleading guilty?

9 A. Yes, I did.

10 Q. What specific crime did you plead guilty to?

11 A. Conspiracy to distribute drugs.

12 Q. Have you been sentenced yet on that charge?

13 A. No, I have not.

14 Q. How many years in prison could you get on that charge?

15 A. Up to 40 years in prison.

16 Q. Do you face any mandatory minimum prison term?

17 A. There's a mandatory minimum of five years on that charge.

18 Q. And as a result of the assistance you gave to authorities,
19 did the government give you a cooperation agreement?

20 A. Yes, they did.

21 Q. And what does your cooperation agreement require you to do?

22 A. The cooperation agreement requires that I be truthful,
23 honest and I don't commit anymore crimes.

24 Q. And are you testifying today pursuant to that cooperation
25 agreement?

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Duch - direct

1 A. Yes, I am.

2 Q. Now, if you satisfy your obligations under your cooperation
3 agreement, what's your understanding of what the government
4 will do for you?

5 A. From my understanding is that the government will submit a
6 5K letter, and that letter pretty much states that, you know,
7 I've been cooperative.

8 Q. Who does that letter go to?

9 A. That goes to my judge.

10 Q. The judge who will sentence you?

11 A. That's correct.

12 Q. Okay. What do you understand the government will put in
13 that letter?

14 A. That I've been cooperative and I've been truthful, honest,
15 haven't broke any crimes, and my judge will take that into
16 consideration upon sentencing time.

17 Q. And is it your hope that based on that letter to the judge
18 you'll get a lighter sentence than you might otherwise?

19 A. Yes, it is. That's my hope.

20 Q. If the government writes that letter, will you still face
21 that mandatory minimum of five years?

22 A. I can still face that mandatory minimum of five years;
23 that's correct.

24 Q. If the government writes that letter, will you get out from
25 that mandatory minimum?

Flsgulb6

Duch - direct

1 A. I do have the ability to get sentenced below that mandatory
2 minimum of five years; that's correct.

3 Q. So what sentence do you hope to receive as a result of your
4 cooperation?

5 A. I hope to receive time served.

6 Q. Even if the government writes that letter to your
7 sentencing judge, is there any guarantee that the government's
8 given you that you'll get a sentence of time served?

9 A. Absolutely not. It's absolute completely up to my judge.

10 Q. For any particular sentence has the government guaranteed
11 you?

12 A. None whatsoever.

13 Q. Will the jury's verdict in this case have any effect on
14 whether the government writes the sentencing letter to your
15 judge?

16 MR. DRATEL: Objection.

17 Q. Has the government told you that?

18 THE COURT: I'll allow it.

19 A. Can you repeat the question, please.

20 THE COURT: Why don't you rephrase.

21 MR. TURNER: Sure.

22 Q. Is it your understanding that the jury's verdict --

23 THE COURT: Why don't you say "the outcome of the
24 case."

25 Q. Is it your understanding that the outcome in this case will

Flsgulb6

Duch - direct

1 have any effect on whether the government writes the sentencing
2 letter to your judge?

3 A. It should have no impact on whether the letter is written
4 or not.

5 Q. And what happens to your cooperation agreement if the
6 government learns that you haven't been truthful today?

7 A. From what I understand, the letter won't be written and I
8 can face up to 40 years in jail.

9 Q. Do you have any history of drug addiction?

10 A. Yes, I do.

11 Q. Are you clean today?

12 A. Yes, I am.

13 Q. How long have you been clean?

14 A. About a year and-a-half almost.

15 Q. Were you using drugs at the time of your arrest?

16 A. Yes, I was.

17 Q. Have you ever used drugs since then?

18 A. No, I have not.

19 Q. What drugs were you -- do you -- in terms of your drug
20 addiction history, what drugs have you been addicted to in the
21 past?

22 A. Mainly heroin, as well as opiate painkillers.

23 Q. How often did you use those drugs when you were addicted to
24 them?

25 A. On a daily basis several times a day.

Flsgulb6

Duch - direct

1 Q. And when did you first develop a drug addiction problem?

2 A. I believe it was in about 2007 or '08 when I initially had
3 some battles with addiction.

4 Q. And did you get addicted to painkillers at that time?

5 A. Yes, I did.

6 Q. And where did you get those painkillers?

7 A. From my doctor. I suffered from a few different sporting
8 injuries and those sporting injuries required -- well, didn't
9 require, but you know, it helped that I took those opiate pain
10 relievers, and being that I took those opiate pain relievers
11 for an extended period of time, I developed an addiction.

12 Q. And then what happened?

13 A. Well, the opiate pain relievers didn't really provide the
14 same level of relief. Over a period of time, I developed a
15 tolerance. At that time, I had also got painkillers from other
16 people on the street besides my doctor, and I eventually found
17 out that heroin was a -- was just as effective as the
18 painkillers and it was also cheaper. So, you know, developing
19 a tolerance, not being able to afford my habit to the
20 painkillers, I turned to heroin being a cheaper alternative and
21 it was also much more potent.

22 Q. How much heroin did you start using?

23 A. It was somewhere about 30 bags per day.

24 Q. And by bags, what do you mean?

25 A. Individual little glassine bags that they're sometimes

Flsgulb6

Duch - direct

1 called stamps.

2 Q. How long did your heroin addiction continue?

3 A. To about 2007 up to about 2009.

4 Q. And did your use of heroin increase or decrease over time?

5 A. It increased.

6 Q. Why is that?

7 A. Again, I developed -- I continued to develop a tolerance
8 and was addicted to the heroin, so more of the drug was
9 required to achieve the same effect.

10 Q. Did you run into any trouble with the law during this time?

11 A. Yes, I did.

12 Q. What happened?

13 A. I was arrested on several occasions for failure to turn
14 over a controlled, dangerous substance to law enforcement.

15 Q. And were you arrested for anything else?

16 A. I was also arrested for I believe it was a burglary
17 shoplifting charge.

18 Q. Was that shoplifting charge connected to your drug
19 addiction at all?

20 A. Yes, it was.

21 Q. How was it?

22 A. Well, I wasn't able to afford my addiction, so to pay for
23 my addiction, so I actually wound up shoplifting some items
24 from a Target store.

25 Q. And how much did you start spending on your heroin

Flsgulb6

Duch - direct

1 addiction?

2 A. It was probably about 200- to \$300 a day.

3 Q. So at some point, you got clean?

4 A. Yes, I did.

5 Q. When was that initially?

6 A. Initially, it was in October of 2009.

7 Q. And did you ever develop an addiction to drugs again?

8 A. Yes, I did.

9 Q. And when was that?

10 A. That was in about October, maybe September of 2012.

11 Q. And what drug did you become addicted to?

12 A. Painkillers.

13 Q. And did you start using painkillers regularly again?

14 A. Yes, I did.

15 Q. Did you develop a tolerance to them again?

16 A. Yes, I did.

17 Q. Did you start using any other drugs around this time?

18 A. I also began to use heroin.

19 Q. And how much heroin did you start taking?

20 A. Again, about 30 bags a day.

21 Q. How would you ingest it?

22 A. Initially, I snorted the drugs, but over time, I began to
23 inject the drugs.

24 Q. And what would happen if you didn't take it?

25 A. Um, I would start to become ill and go through withdrawal

Flsgulb6

Duch - direct

1 symptoms. Those symptoms included sweating, vomiting,
2 diarrhea, extreme flu-like symptoms.

3 Q. How long did it take for those withdrawal symptoms to
4 start?

5 A. Within a few hours usually.

6 Q. So how often did you have to keep up the use of heroin to
7 stop the withdrawal symptoms?

8 A. Every few hours, several times per day.

9 Q. Did you quit using painkillers after you started using
10 heroin?

11 A. I continued to use the painkillers. Over time, I probably
12 used more heroin than painkillers.

13 Q. Why did you continue using the painkillers?

14 A. So you know, at the time I lived with my girlfriend and I
15 also maintained a job so, you know, it was something that I
16 tried to conceal from my girlfriend, my family member -- my
17 family members, people who I worked with so, during other times
18 when I wasn't able to discreetly use heroin, I would use the
19 painkillers, you know, like on a weekend or if I needed to be
20 at a job or something.

21 Q. So at some point in 2012, did you start buying drugs on the
22 Silk Road website?

23 A. Yes, I did.

24 Q. How had you heard about it?

25 A. Probably through one of the news media outlets.

Flsgulb6

Duch - direct

1 Q. And roughly when did you first visit Silk Road?

2 A. It was in October of 2012.

3 Q. And what drugs were you looking to buy?

4 A. Painkillers.

5 Q. And why were you looking to buy painkillers at that time?

6 A. Well, I -- again, I had become addicted to them and to
7 stave off any withdrawal and/or sickness, I looked to Silk Road
8 to get those painkillers.

9 Q. And had your previous supply -- was it no longer available?

10 A. That's correct. It was no longer available. I was under
11 the care of a doctor at the time who was prescribing those
12 painkillers and that prescription was no longer being filled.

13 Q. So, what about heroin? Were you looking to buy heroin on
14 Silk Road?

15 A. No, I wasn't.

16 Q. Why not?

17 A. Well, I knew of a local supplier that I could go to and it
18 was cheaper for me to get it there.

19 Q. So did you start buying painkillers on the site?

20 A. Yes, I did.

21 Q. And did the site work?

22 A. Yes, it did.

23 Q. You got what you ordered?

24 A. Yes, I did.

25 Q. Besides painkillers, did you ever buy any other drugs on

Flsgulb6

Duch - direct

1 Silk Road?

2 A. On a few occasions, I did, yes.

3 Q. What other drugs?

4 A. I purchased heroin on one occasion, cocaine on a couple of
5 occasions, ecstasy, as well as hash.

6 Q. And why did you order cocaine and ecstasy? Did it have
7 anything to do with your opiate addiction?

8 A. No, it didn't. I think maybe I was under the influence at
9 the time and, you know, it was available. I don't necessarily
10 know anybody who has those things and being that the website
11 that I was on had them, I purchased them through the site at
12 that time.

13 Q. So when did you start dealing drugs on Silk Road?

14 A. I initially started dealing drugs I believe it was in April
15 of 2013.

16 Q. And what led you to decide to do that?

17 A. Well, my prescription painkiller addiction as well as
18 heroin addiction became very expensive, and I could no longer
19 afford it, so I resorted to dealing drugs on Silk Road.

20 Q. How much heroin were you buying off the street for yourself
21 in a given week at that point, April 2013?

22 A. My tolerance increased to the point where I would use
23 anywhere between 60 and 100 bags of heroin a day.

24 Q. And painkillers, too?

25 A. And painkillers as well.

Flsgulb6

Duch - direct

1 Q. So how much were you spending per week back then on drugs?

2 A. At a very minimum of \$2,000 all the way up to about \$3,500
3 a week.

4 Q. How much were you making a week from your IT job?

5 A. Well, that decreased over time. I wasn't able to
6 necessarily maintain the level of service that was required for
7 my job to perform adequately, and, you know, the income from my
8 main job, which was computers, decreased.

9 Q. How much were you making compared to the 3500 you were
10 spending a week?

11 A. I wasn't able to afford my habit.

12 Q. So where were you getting the money at the time to buy your
13 drugs?

14 A. Well, being that I was successful for a period of time, I
15 did have some money saved up. So once I used up my savings, I
16 then turned to dealing drugs.

17 Q. And what drugs did you start selling on Silk Road?

18 A. Mainly heroin.

19 Q. You had used drugs before this, right, but had you ever
20 dealt drugs before?

21 A. No, I had not.

22 Q. Had you ever considered selling drugs on the street?

23 A. Never.

24 Q. So why were you willing to deal drugs on Silk Road?

25 A. Well, I think, you know, being successful in purchasing

Flsgulb6

Duch - direct

1 drugs on Silk Road, I saw the relative ease that came with it.
2 There was a certain amount of perceived level of safety as well
3 as anonymity; and as long as you follow the rules of the site,
4 it seemed like something that I could potentially -- to
5 potentially get away with.

6 Q. When you say safety, safety from what?

7 A. Safety from being pursued by law enforcement.

8 Q. Now, you were addicted to drugs at the same time, right?

9 A. That's correct.

10 Q. Didn't you have any misgivings about selling addictive
11 drugs to other people?

12 THE COURT: Can you rephrase.

13 Q. Did you have any misgivings about selling addictive drugs
14 to other people?

15 MR. DRATEL: Objection.

16 THE COURT: I'll allow it.

17 You may answer.

18 A. Yes, I did. It was something that bothered me on a daily
19 basis.

20 Q. So how were you able to bring yourself to do it on Silk
21 Road?

22 MR. DRATEL: Objection.

23 A. Well, I think there were a couple --

24 MR. DRATEL: Objection.

25 THE COURT: Overruled.

Flsgulb6

Duch - direct

1 BY MR. TURNER:

2 Q. Go ahead.

3 A. I think there were a couple of factors that brought me to
4 that point: One is I had an addiction that I needed to feed.
5 It was something that I didn't enjoy doing. It was something I
6 didn't like doing. But to help ease the -- ease my moral
7 conscience, I believe that my drugs -- my drug use continued to
8 increase.

9 Q. So what did you have to do on Silk Road to become a vendor?

10 A. Essentially, you needed to log onto the site, create a
11 username, log onto the site and agree to the terms and
12 conditions of the site.

13 MR. TURNER: Could we put 121B on the screen. Can you
14 pull it pup.

15 Q. Do you recognize what you see on the screen?

16 A. Yes, I do.

17 Q. How do you recognize it?

18 A. I believe this is the seller's agreement and it requires
19 you, prior to selling drugs on Silk Road, you needed to agree
20 to these terms and conditions of the seller contract.

21 Q. And did you see this when you tried to create a vendor
22 account on Silk Road?

23 A. Yes, I did.

24 Q. It says "Get your products to your customers as quickly
25 easily and anonymously as a Silk Road independent seller.

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Duch - direct

1 Please read the following contract and the seller's guide
2 carefully by clicking 'I agree' at the bottom. You agree to
3 abide by the guidelines and terms below when selling on Silk
4 Road."

5 Did you read the seller's guide?

6 A. Yes, I did.

7 Q. And what did you understand to be the guidelines and terms
8 you were agreeing to?

9 A. There were a couple of different guidelines that were
10 recommended and that you needed to follow. One was utilizing
11 some stealth shipping methods that were mentioned in the
12 forums. You also needed to agree to the conditions of the site
13 to pay commissions to the Silk Road website for transacting
14 business.

15 Q. So did you click "I agree" at the time?

16 A. Yes, I did.

17 Q. And who did you understand to be the other party to this
18 agreement?

19 A. My understanding is that it was Dread Pirate Roberts.

20 Q. And who did you understand Dread Pirate Roberts to be?

21 MR. DRATEL: Objection.

22 THE COURT: Overruled.

23 A. I did not know the identity of Dread Pirate Roberts. I was
24 just under the impression that this individual had run the Silk
25 Road website.

Flsgulb6

Duch - direct

1 Q. Once you entered into this agreement, did you ever have to
2 communicate with Dread Pirate Roberts or DPR directly as part
3 of being a vendor?

4 A. I didn't have to. No.

5 Q. You said that one of the rules that you had to agree to was
6 to use the site's payment system?

7 A. That's correct.

8 Q. As a buyer on Silk Road, had you had any personal
9 experience with vendors who had gone outside the
10 personal -- had gone outside the Silk Road payment system?

11 A. I had read some things about people going outside of the
12 payment system. Part of the understanding of using Silk Road
13 is to never go outside of their payment system. There was an
14 escrow system that was set up and in place for making payments,
15 and it was recommended to always use that escrow system and to
16 never release funds to any potential seller prior to receiving
17 product.

18 Q. So did you set up a separate account to use as your vendor
19 account on the site as opposed to the buyer account used
20 earlier?

21 A. Yes, I did.

22 Q. What was the username you chose for your account?

23 A. It was called deezletime.

24 Q. How do you spell it?

25 A. D-E-E-Z-L-E-T-I-M-E.

Flsgulb6

Duch - direct

1 Q. Did you have to pay anything to Silk Road to start up that
2 account?

3 A. There was some initial money that was put in escrow.

4 Q. How much money?

5 A. I believe it was about \$500.

6 Q. And what was the purpose, as far as you understood, of that
7 payment?

8 A. Once you established yourself and proved yourself as a
9 reliable seller on Silk Road, that money was later returned to
10 you.

11 Q. How were you supposed to prove yourself reliable and
12 dependable?

13 A. By delivering the products, by delivering drugs in my case,
14 to the sellers in a timely and efficient manner.

15 Q. You mean to the buyers?

16 A. To the buyers, that's correct. I'm sorry.

17 Q. And how was that supposed to be -- how was that feedback
18 supposed to be received by the website?

19 A. So, as part of the website, there was also a feedback
20 system. And any time that there was a transaction, a buyer was
21 afforded the opportunity to leave feedback regarding the drug
22 transaction. So as long as the drug transaction went well, you
23 received positive feedback. The more positive feedback that
24 you received, that was realized throughout your experience on
25 the website.

Flsgulb6

Duch - direct

1 Q. So, the \$500 was a deposit?

2 A. That's correct.

3 Q. And if the feedback showed that you were actually dealing
4 drugs, you got your \$500 back?

5 A. That's correct.

6 Q. Once you made that deposit and set up the account, how did
7 you advertise your heroin on Silk Road?

8 A. Well, I created some listings. There were generally three
9 different listings that I created: One for an individual bag,
10 another one for ten bags, and another one for what's called a
11 brick of heroin, which is equivalent to 50 bags.

12 There was some sellers who --

13 Q. Let me interrupt you. Would you take a look at Government
14 Exhibit 700, please, in your binder in front of you. Do you
15 recognize that document?

16 A. Yes, I do.

17 Q. How do you recognize it?

18 A. I recognize it because it has my user account mentioned in
19 the top-right corner, and this is essentially a way to update
20 your profile on the Silk Road website.

21 Q. Does this fairly and accurately reflect the contents of
22 your vendor page as of the time you were arrested? Let me make
23 sure you're looking at 700. A or B?

24 A. I think that's what I'm looking at. I think I might be
25 looking at the --

Flsgulb6

Duch - direct

1 Q. Take your time.

2 A. There we go. Thank you. Yes, this was the -- my vendor
3 page, right before my arrest in 2013.

4 Q. Okay.

5 MR. TURNER: The government offers Exhibit 700 into
6 evidence, your Honor.

7 MR. DRATEL: No objection.

8 THE COURT: Received.

9 (Government's Exhibit 700 received in evidence)

10 Q. So deezletime, that was your username?

11 A. That's correct.

12 MR. TURNER: Could we go over here. Actually if we
13 can zoom in there.

14 Q. Okay. So it says Featured listings, East Coast Style
15 heroin stamps X10 (3 Free!!!) \$98. East Coast Style Heroin
16 Stamps X50 bags (1 Brick) \$346.

17 Were these the -- what are we looking at here?

18 A. Those are essentially listings that I created on the Silk
19 Road website.

20 Q. And what do these terms mean? What does East Coast Style
21 Heroin mean?

22 A. The way heroin is packaged and distributed throughout the
23 New York metro area, excuse me, is it's packaged in individual
24 little glassine bags and they're sometimes referred to as
25 stamps because of the stamp that is put on the outside of the

Flsgulb6

Duch - direct

1 bag with ink giving it some type of name.

2 Q. So what stamp -- examples of stamps that would be on your
3 product?

4 A. A few that I recall would be Black Magic, Murder, Hotshot.

5 Q. And what was the approximate weight of each bag?

6 A. They weighed somewhere around ten milligrams each.

7 Q. And the brick you mentioned before, brick is -- what is
8 that again?

9 A. That's equivalent to 50 bags of heroin.

10 Q. The price is displayed in dollars, but how did you receive
11 your payments?

12 A. All payments were received in bitcoins.

13 Q. Did you have the option of displaying your price in
14 dollars?

15 A. Yes, I did.

16 Q. No images on the listings. Was that your choice?

17 A. Yes, it was my choice.

18 Q. Why was that?

19 A. There's something called geo-tagging and any time that you
20 take a digital photo, you can more or less identify where that
21 photo was taken, so I chose not to put any photos in there to
22 try to evade law enforcement.

23 MR. TURNER: Back up, please. Go here.

24 Q. This gray area, by the way, did you control what text
25 appeared here?

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Duch - direct

1 A. Yes. And I did update that frequently.

2 Q. So here it says: "Update, 9/27/2013. We will not be
3 shipping any product on Saturday 9/28/2013. All orders
4 received after 3:00 p.m. EST on Friday 9/27/2013 will be
5 shipped on Monday 9/30/2013. We repeat...no Saturday shipments
6 on 9/28!!! All orders will be shipped on 9/30. We apologize
7 for any inconvenience and thank you all for your continued
8 support."

9 Can you back out and go to and focus on this for the
10 time being.

11 This is from a little while before. It says "New
12 Stamp...Fire!!!New Stamp. Revised Saturday cutoff time.
13 Cut-off time for Saturday 9/21/2013 is 12:00 p.m. EST. All
14 orders received prior to this time will be shipped same day.
15 All orders received after 12 noon will be shipped on Monday
16 9/23/2013. We repeat cut-off time for 9/21 is 12 noon."

17 What are you talking about in these updates?

18 A. Essentially I'm mentioning the cut-off times in which I
19 needed to receive orders. So if anything I received before
20 3:00 p.m. that day would usually get shipped out the same day.
21 If there were any changes to that policy, I tried to make
22 updates to my vendor page letting potential buyers know that,
23 you know, you needed to either change your plans, get the
24 orders to me earlier, change the dates and/or times that, you
25 know, that things would be shipped out.

Flsgulb6

Duch - direct

1 Q. Was fast shipping something that you specifically
2 advertised?

3 A. Yes, it was.

4 Q. Same-day shipping?

5 A. Same-day shipping, that's correct.

6 Q. Why did you think your customers cared so much about fast
7 shipping?

8 A. I think that users of heroin, they want to make -- they
9 want to know that their product is in the mail when they order.
10 I mean, it's something that they need to kind of listen to
11 because they're going to go through withdrawal symptoms. Most
12 people who develop heroin addictions will go through withdrawal
13 symptoms. These buyers wanted to make sure that they put their
14 money in escrow, that their package was in mail.

15 Q. How did you communicate with your customers on the site?

16 A. There was essentially a mail-messaging system that was
17 within the Silk Road website.

18 Q. And would you get messages from your customers about
19 shipping times?

20 A. All the time every day.

21 Q. Take a look at Government Exhibit 704 in your binder. Do
22 you recognize these -- what's in this document?

23 A. Yes, I do.

24 Q. How do you recognize it?

25 A. They are messages from buyers asking about a variety of

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Duch - direct

1 different things. Mainly, it appears that they're wondering if
2 their products have been shipped out that day.

3 Q. And are these messages that you received in your vendor
4 account in your dealing with Silk Road?

5 A. Yes, they are.

6 MR. TURNER: The government offers Exhibit 704 into
7 evidence.

8 MR. DRATEL: Objection as to hearsay and Vayner.

9 THE COURT: All right. Those objections are
10 overruled. Government Exhibit 704 is received.

11 (Government's Exhibit 704 received in evidence)

12 MR. TURNER: Could we take a look at the top one,
13 please. August 9, 2013 from wigglyworm, subject: confirmation.
14 Message: "Hey bud, just need some confirmation on if my
15 package will get to me tomorrow. I made the 3:00pm deadline by
16 at least a few hours so I'm hoping everything will go smoothly.
17 Otherwise I'm gonna be sick for the beautiful weekend we have
18 coming up here in NY... I know I can count on you to be as
19 reliable and professional as possible, so just get back to me
20 as soon as you can. Thanks!"

21 Can we go to the fifth from the top.

22 This is from August 15, 2013 from moderngoose:
23 "hello!! first time customer with you here, just wanted to make
24 sure but as soon as my btc hit my account im going to order ur
25 10 stamp listing via express and i wanted to make sure that as

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Duch - direct

1 long as i order them around 12:30pm EST will they ship out
2 today as well? i see ur cutoff time is 3 i just wanna double
3 check because i am EXTREMELY dope sick and NEED something by
4 tomorrow!! :(i am miserable at the moment having not slept all
5 night tossing and turning not to mention getting actually sick
6 :/ but anyways thank you very much for ur time, please respond
7 asap. MG"

8 Can we go to page two, the third from the top here.

9 September 3, 2013. "Hello. Hey deezle, i placed the
10 order on the 31st... I understand there's been a few straggl
11 aside bt is there anyway you could ship it overnight. I am
12 throwing up, the worst of the worst withdrawl symptoms and plus
13 i have life destroying pain."

14 Q. Was it relatively common for you to get messages from your
15 vendors indicating they needed the drugs right away because
16 they were dope sick?

17 A. Yes. I received those messages every day.

18 Q. Could we go back to Government Exhibit 700, please. Let's
19 go to page two. This is also from your vendor page?

20 A. Yes, it is.

21 MR. TURNER: And it says "Shipping/Packaging. We
22 absolutely will go to the greatest lengths possible to provide
23 our clients with the most advanced packaging and shipping
24 methods available. We ship USPS Priority and Express at this
25 time. There is a slight up charge on whatever USPS charges as

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Duch - direct

1 the cost for our stealth and packaging is not cheap and is time
2 consuming."

3 Jump to the second paragraph.

4 "You will also find that our packaging processes use
5 stealth methods to prevent detection as well as the latest
6 technology in MBB and sealing."

7 Q. What does MBB mean?

8 A. MBB is a -- it stands for moisture barrier bag.

9 Q. "The bottom line is that you know that your package will
10 arrive there" -- excuse me -- "will arrive as there will never
11 be anything that we do that will make your package look
12 suspicious if accidentally opened and the vapor transfer
13 transmission rates of our materials are the lowest currently
14 available in the industry." What are you talking about here?

15 A. Moisture barrier bags are something that I use to package
16 the heroin inside of. Inside of each moisture barrier bag,
17 it's engineered to have what's called a vapor transmission
18 rate. That vapor transmission rate can potentially prevent law
19 enforcement or drug-sniffing dogs to potentially not smell the
20 drugs that are inside the package.

21 Q. Take a look at what's been marked in your binder as
22 Government Exhibit 701.

23 (Continued on next page)

24

25

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Duch - direct

1 Q. Take a look at what's been marked in your binder as
2 Government Exhibit 701.

3 Would you flip through the pages in the binder, in
4 that exhibit.

5 (Pause)

6 Do you recognize what's in these photos?

7 A. Yes, I do.

8 Q. How do you recognize them?

9 A. It's consistent with the name of the stamp that I shipped
10 as well as the shipping method that I used.

11 Q. What is it? What are the photos of in the exhibit?

12 A. Essentially we've got an Express Mail envelope. Inside of
13 the Express Mail envelope is a silver moisture barrier bag.

14 Q. I just asked you is this a package that you yourself
15 shipped?

16 A. Yes, it is.

17 MR. TURNER: The government offers Exhibit 701 into
18 evidence.

19 MR. DRATEL: No objection.

20 THE COURT: Received.

21 (Government's Exhibit 701 received in evidence)

22 MR. TURNER: Publish the exhibit. OK.

23 Could you zoom in on the address.

24 Q. The return address is "I sold it on eBay in Wayne, New
25 Jersey." How did you choose that return address?

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Duch - direct

1 A. EBay is obviously a common way for people to resell
2 products that I sold on eBay with an eBay reselling company
3 located out of Wayne, New Jersey. I essentially just Googled
4 eBay resellers and used that legitimate address as a return
5 address to ship my order.

6 Q. You didn't have any actual association with that company?

7 A. None, whatsoever.

8 MR. TURNER: Could we go to the next page.

9 Q. What are we looking at here.

10 A. This is an Express Mail envelope, and inside of the Express
11 Mail envelope is a silver moisture barrier bag.

12 Q. Would you go to the next page.

13 And what are we looking at here?

14 A. Inside of the moisture barrier bag there is a hair towel.
15 It was common for me to purchase cheap items like hair towels,
16 CD holders and try to hide the heroin inside of those products.

17 Q. Could you go to the next page.

18 So what are we looking at here?

19 A. Wrapped up inside of the hair towel there is another
20 moisture barrier bag and that is custom cut to fit the
21 specified order.

22 Q. Would you go to the next page. Could you zoom in.

23 So what are those?

24 A. Those are individual bags of heroin and around them appear
25 to be some rubber bands.

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Duch - direct

1 Q. Could you go to the next page.

2 Is that a closeup of the heroin?

3 A. Yes, it is.

4 Q. So each one of these is -- what is that?

5 A. Each bag is an individual dose of heroin, or what's called
6 a stamp.

7 Q. And where did you learn all of these packaging techniques?

8 A. I learned most everything through the Silk Road website.

9 On the forums there are a variety of different methods that
10 were recommended in trying to come up with techniques to
11 prevent detection by law enforcement.

12 Q. And how did you package the drugs without leaving
13 fingerprints behind?

14 A. Each time that I would leave the package or anything, I
15 always wore gloves.

16 Q. Where did you base your activity out of? Where did you
17 package the drugs?

18 A. Everything was done from my home.

19 Q. Where was your home?

20 A. In Orange County, New York.

21 Q. And where did you buy the drugs?

22 A. In Passaic County, New Jersey.

23 Q. And where did you ship the drugs from?

24 A. I shipped the drugs from my home but utilized the United
25 States Postal Service for shipping.

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Duch - direct

1 Q. And what areas were those Post Offices in?

2 A. Mostly in Orange County.

3 Q. Anywhere else?

4 A. I think I may have used a New Jersey Post Office once.

5 Q. If you would go back to Government Exhibit 700. Go to page
6 3.

7 Let's see. If you could go here.

8 All right. It says: "In the event that SR goes down
9 you can reach us at BMR ("deezletime") and Atlantis
10 ("deezletime"). We will be using these accounts daily as well.

11 What are BMR and Atlantis?

12 A. Atlantis and BMR are other sites that were also -- that I
13 also had accounts at that I also sold drugs at. BMR stands for
14 Black Market Reloaded.

15 Q. Were they similar to Silk Road?

16 A. Yes.

17 Q. Were they similar in size to Silk Road?

18 MR. DRATEL: Objection.

19 THE COURT: You need to lay a foundation.

20 Q. How much of your -- well, from viewing the sites, could you
21 see the number of vendors on those sites compared to Silk Road?

22 A. Yes, you can.

23 Q. So how do the number of vendors on those sites compare to
24 Silk Road?

25 A. Silk Road had a substantially more amount of --

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Duch - direct

1 MR. DRATEL: Objection. Hearsay.

2 THE COURT: Hold on.

3 MR. TURNER: Personal observation.

4 (Pause)

5 THE COURT: I will allow it.

6 A. Silk Road had a substantially larger amount of sellers that
7 were on there.

8 Q. Let me ask you this. How many of your orders came from BMR
9 and Atlantis as compared to Silk Road?

10 A. Silk Road was probably over 99 percent of all orders I
11 received.

12 Q. By the way, why did you need to deal on any of these
13 websites? You are a tech guy, right?

14 A. Right.

15 Q. So why didn't you just launch a solo drug dealing business
16 yourself on the Tor network?

17 A. Well, yeah, I potentially did have the technical
18 capability, but there was an infrastructure that was already in
19 place and that was known to be Silk Road and it was successful.
20 There was a lot of sellers that were there. I know as a buyer
21 I was successful in obtaining product as well.

22 So there was the, you know, already established
23 infrastructure, the buyers, there were sellers. And there was
24 a fair amount of publicity that the site had already received.
25 So there was constantly new clients or new buyers that were

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Duch - direct

1 already there.

2 Q. When you say there were already sellers there, how is it
3 helpful for you to have -- to enter into a marketplace that was
4 already full of sellers?

5 A. Well, I mean, without sellers there aren't going to be any
6 buyers. So, I mean, you know, if there aren't any sellers,
7 then there aren't going to be any buyers that are coming to the
8 website.

9 Q. So it is the buyers that ultimately --

10 MR. DRATEL: Objection.

11 THE COURT: Why don't you rephrase the question.

12 MR. TURNER: Sure.

13 Q. So in terms of what ultimately drew you to Silk Road, was
14 it customer base; is that fair?

15 A. It was the customer base, that's correct.

16 Q. And what was involved technically in setting up a vendor
17 page like we saw on Government Exhibit 700? Is it easy to do?

18 A. It was extremely easy to do.

19 Q. Can we take a look at Government Exhibit 700A?

20 Do you see it in front of you?

21 A. Yes.

22 Q. What is that?

23 A. That is the vendor profile page. This page is used to
24 update your profile on the page that we were looking at
25 previously.

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Duch - direct

1 MR. TURNER: The government offers Exhibit 700A into
2 evidence.

3 MR. DRATEL: Objection as to hearsay.

4 THE COURT: Government Exhibit 700A is received. The
5 objections are overruled.

6 (Government's Exhibit 700A received in evidence)

7 BY MR. TURNER:

8 Q. So explain what we are looking at here.

9 And could we zoom in here.

10 A. Sure. So this is the profile description. When you wanted
11 to make any updates to your vendor page, you would essentially
12 type it in right in that profile description. When you click
13 the update profile button, whatever you typed in that box there
14 would update to your profile page.

15 Q. Could we back out. There are some options at the bottom
16 here. One of them is post-commission pricing, pre-commission
17 pricing. What did that mean to you?

18 A. There were different ways that the money that was taken by
19 the Silk Road website was taken from you as a buyer. You can
20 choose it either pre-commission or post-commission, but it is
21 actually included in the price to the seller or if it was
22 something that you paid after the transaction took place.

23 Q. So, either way, was a commission taken on every sale that
24 you did on Silk Road?

25 A. On every sale, that's correct.

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Duch - direct

1 Q. Could you take a brief look at 700B.

2 (Pause)

3 Do you recognize this exhibit?

4 A. Yes. This is a page used to create a new listing within
5 your vendor profile.

6 MR. TURNER: The government offers Exhibit 700B.

7 MR. DRATEL: Hearsay, your Honor.

8 THE COURT: Why don't you build more of a foundation
9 for that with this witness.

10 Q. Did you yourself use a page like this to create your
11 listings on Silk Road?

12 A. Yes, I did.

13 Q. And does this exhibit fairly and accurately reflect your
14 recollection of what that page looked like?

15 A. Yes, it does.

16 MR. TURNER: The government offers 700B into evidence.

17 MR. DRATEL: It still is hearsay, your Honor.

18 THE COURT: All right. The objection is overruled.
19 Government Exhibit 700B is received.

20 (Government's Exhibit 700B received in evidence)

21 THE COURT: Let me ask you if we could go back to 700A
22 for one moment?

23 MR. TURNER: Yes, your Honor.

24 THE COURT: Mr. Duch, did you use each of the setting
25 boxes that are referenced on 700A?

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Duch - direct

1 THE WITNESS: Yes, I did.

2 THE COURT: And did they perform the functions
3 indicated? In other words, "Change Password" had in fact
4 changed a particular password?

5 THE WITNESS: Yes, it did.

6 THE COURT: Is that true for each of the functions on
7 that page?

8 THE WITNESS: Yes, that's true.

9 THE COURT: Thank you.

10 You may proceed, Mr. Turner.

11 MR. TURNER: Thank you, your Honor.

12 BY MR. TURNER:

13 Q. OK. 700B. So you just put in the title of your listing,
14 the asking price, quantity you had available, and then
15 description down below; is that how it worked?

16 A. Pretty much. You just type in, you know, a title, how much
17 you want to charge, the quantity, maybe how many you had on
18 sale, and a brief description of what it was that you were
19 selling.

20 Q. So where did you get your heroin supply from?

21 A. From a street-level dealer in Passaic County, New Jersey.

22 Q. How often would you pick up heroin from your supplier?

23 A. One to two times per week.

24 Q. How would it be packaged when you picked it up?

25 A. It was packaged in individual little glassine bags. The

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Duch - direct

1 glassine bags were wrapped into bundles of ten. Each --

2 Q. The bags were stamped when you picked them up?

3 A. That is correct. The bags were already stamped with some
4 type of brand on them or name.

5 Each -- there were ten bags in each bundle. They were
6 wrapped in individual -- wrapped around with rubber bands, and
7 the rubber bands were then wrapped around a larger set of
8 rubber bands which had 50 bags of heroin in them, and that was
9 equivalent to a brick of heroin. Around the 50 bags of heroin
10 there was some magazine paper, and they were all taped together
11 to contain all of the heroin.

12 Q. And how many bricks would you generally buy at a time?

13 A. Up to 40 bricks of heroin.

14 Q. And how much did your supplier charge you? How much did
15 that cost you?

16 A. Each bag was \$3. So it was about \$6,000 for each time I
17 picked up heroin.

18 Q. And how did that street price compare to what you were able
19 to sell the drugs for on Silk Road? How much was your markup?

20 A. I generally tried to keep it somewhere around double that.
21 So about 100 percent.

22 Q. So you were just taking the same heroin you were buying off
23 the street and putting it up for sale on Silk Road at a hundred
24 percent markup?

25 A. That's correct.

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Duch - direct

1 Q. How were you able to sell at such a high markup?

2 MR. DRATEL: Objection.

3 THE COURT: Why don't you rephrase.

4 Q. Why did you think you would be able to sell at such a high
5 markup?

6 MR. DRATEL: Objection.

7 THE COURT: I will allow it.

8 You may answer.

9 A. Well, there were -- being that Silk Road had access to a
10 large geographic region, there was -- some of these areas
11 didn't necessarily have --

12 MR. DRATEL: Objection.

13 THE COURT: Well, ladies and gentlemen, this answer is
14 for the witness' perception. It is not offered for the truth
15 as to whether particular areas did or did not in fact have
16 access to heroin.

17 You may answer.

18 A. OK. There was a -- from what I understood, there was --
19 the heroin was not available in the geographic regions all over
20 the United States, and, you know, so somebody out in Utah was
21 now able to gain access to the heroin. So, you know, it wasn't
22 something that was necessarily available to them, but the Silk
23 Road website made that available to them.

24 Q. Did you know where your customers lived, where you were
25 sending the heroin -- not "lived," but did you know where they

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Duch - direct

1 were receiving the shipments you were sending them?

2 A. Yes. Well, I would get their addresses through the Silk
3 Road website.

4 Q. And did you keep a record of the transactions you did with
5 your customers on Silk Road?

6 A. Yes, I did.

7 Q. What records did you keep?

8 A. Essentially, I created a spreadsheet that tracked all the
9 business that I conducted, all the drugs that I sold on Silk
10 Road.

11 Q. Did you keep your customers' addresses?

12 A. Yes, I did.

13 Q. You weren't supposed to do that under Silk Road's rules,
14 right?

15 A. No, I wasn't.

16 Q. But you did it anyway?

17 A. Yes, I did.

18 Q. Where did you keep that information?

19 A. I kept it on my computer at home.

20 Q. And was your computer seized by law enforcement as part of
21 your arrest?

22 A. Yes, it was.

23 Q. Do you see Government Exhibit 703 in your binder?

24 A. Yes.

25 Q. Do you recognize what's there?

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Duch - direct

1 A. Yes, I do.

2 Q. What is it?

3 A. It is a CD with my initials on it and a date that I created
4 it.

5 Q. And when did you create it?

6 A. On the 23rd of January.

7 Q. Of this year?

8 A. Of this year, that's correct.

9 Q. And what's on this spreadsheet -- excuse me, what's on the
10 CD?

11 A. This should be a spreadsheet containing a variety of
12 different information, information that I used to track my
13 orders on Silk Road.

14 Q. Did this come from the data that you kept on your computer?

15 A. Yes, it did.

16 MR. TURNER: May I approach, your Honor?

17 THE COURT: You may.

18 MR. TURNER: Your Honor, the government moves Exhibit
19 703 into evidence and asks that it be published to the jury.

20 MR. DRATEL: No objection.

21 THE COURT: Received. Government Exhibit 703 is
22 received.

23 (Government's Exhibit 703 received in evidence)

24 MR. TURNER: OK. Can we zoom in.

25 BY MR. TURNER:

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Duch - direct

1 Q. Would you walk us through these columns and what each
2 reflects.

3 A. Sure. Column A was the order number. This was generated
4 by the Silk Road website.

5 Column B was the quantity of heroin or the number of
6 bags of heroin that was ordered on the website.

7 Column C was an adjusted quantity that I created.
8 Traditionally with the -- some of my orders, I would give extra
9 bags of heroin. So this adjusted quantity was something that I
10 created later to reflect the actual number of bags of heroin
11 that I distributed.

12 Q. Just to be clear, is that something you created in
13 preparation for testifying today?

14 A. Yes, I did.

15 Q. OK.

16 A. Column D is the postage method used. I essentially used
17 two different ways to ship stuff -- united States Postal
18 Service Express and Priority.

19 Column E would be the address.

20 G is the buyer on Silk Road. That is their -- that is
21 their username.

22 And Column H was the tracking number that I also kept
23 track of for that particular order.

24 MR. TURNER: Ms. Rosen, just to show the jury how far
25 this goes down, could you scroll down slowly.

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Duch - direct

1 (Indicating)

2 MR. TURNER: A little faster. Keep going.

3 Go all the way down to the end, please.

4 (Indicating)

5 MR. TURNER: OK. Could we go back up.

6 Q. What time span does this spreadsheet cover?

7 A. Essentially from when I first started selling drugs on Silk
8 Road up to the day I was arrested.

9 Q. Now, the address information from this document has been
10 redacted, but did you prepare any kind of summary of all the
11 places you mailed shipments to?

12 A. Yes, I did. Essentially, I extracted all of the cities and
13 states where heroin was shipped.

14 Q. Can you take a look at Government Exhibit 703B in your
15 binder.

16 (Pause)

17 Do you recognize that document?

18 A. Yes, I do.

19 Q. What is it?

20 A. It is the -- it is all the cities and states that were
21 extracted from the spreadsheet.

22 MR. TURNER: The government offers Exhibit 703B into
23 evidence.

24 MR. DRATEL: Objection. Hearsay.

25 THE COURT: That objection is overruled. Government

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Duch - direct

1 Exhibit 703B is received.

2 (Government's Exhibit 703B received in evidence)

3 BY MR. TURNER:

4 Q. Could you zoom in here.

5 It is in alphabetical order?

6 A. Yes, it is.

7 Q. Aberdeen, Mississippi; Agawam, Massachusetts; Aguadilla,
8 Puerto Rico; Akron, Ohio; Alanson, Michigan; Albany, New York;
9 Albemarle, North Carolina, etc.

10 How many pages does this go on for?

11 MR. TURNER: Actually, scroll through the pages,
12 Ms. Rosen.

13 (Indicating)

14 A. It is probably about 15 pages here or so.

15 Q. And are the locations concentrated anywhere in particular,
16 or are they spread all over the country?

17 A. They are pretty much spread all over the country.

18 Q. By using this spreadsheet we looked at earlier, were you
19 able to calculate how many drug deals you did on Silk Road?

20 A. Yes, I did.

21 Q. And how many bags or stamps of heroin you sold?

22 A. Yes, I did.

23 Q. How did you calculate that information?

24 A. I pretty much summed up the adjusted quantity that was
25 created in preparation for trial.

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Duch - direct

1 Q. Would you take a look at Government Exhibit 703A. Is this
2 the summary you created?

3 A. Yes, it is.

4 MR. TURNER: The government offers Government Exhibit
5 703A into evidence.

6 MR. DRATEL: Hearsay, your Honor.

7 THE COURT: Government Exhibit 703A is received, and
8 the objection is overruled.

9 (Government's Exhibit 703A received in evidence)

10 BY MR. TURNER:

11 Q. OK. So how many orders did you do in total?

12 A. 2,414.

13 Q. And how many bags of heroin did you sell?

14 A. 31,827.

15 Q. It is about 10 milligrams per bag?

16 A. That is correct.

17 Q. Was it ever more than that?

18 A. Sometimes. Sometimes more. Sometimes a little less. That
19 is about an average.

20 Q. OK. And total estimated weight, you just multiplied the
21 paper bag times the bags you sold and it is 3.18 kilograms of
22 heroin?

23 A. That's correct.

24 Q. And that's from April to September 2013?

25 A. Yes, it is.

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Duch - direct

1 Q. How long did it take you to start doing a steady volume of
2 business on Silk Road? How fast did your business grow?

3 A. Sure. It took about -- in all, about six weeks to go from
4 having no status on Silk Road to becoming relatively well
5 known.

6 Q. So after six weeks how many bags of heroin were you
7 shipping out on a given day?

8 A. Anywhere between 400 to 600 bags of heroin per day.

9 Q. How much revenue were you taking in per month?

10 A. About 60 to \$70,000 a month.

11 Q. And how many hours were you working per day as a drug
12 dealer on Silk Road?

13 A. At least six to eight hours a day Monday through Saturday
14 and some hours on Sunday as well.

15 Q. How many hours per day were you spending on your IT
16 business at that point?

17 A. Well, it decreased significantly over time. I would
18 probably spend maybe two or three hours doing my computer tech
19 work per day.

20 Q. And what did you do with all the money you were making from
21 the site?

22 A. Most of it was used to either support my habit or to
23 reinvest in my drug selling.

24 Q. So how many bags of heroin were you yourself consuming in a
25 given week by this point, by the time of your arrest?

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Duch - direct

1 A. Up to 6 to 700 bags of heroin a week.

2 Q. What was happening to your health at this point?

3 A. It did decrease significantly. My social life suffered.

4 My work life obviously suffered.

5 Q. And so the same drug that was impacting your life in that
6 way you were dealing to thousands of people --

7 MR. DRATEL: Objection.

8 Q. -- on Silk Road?

9 THE COURT: Hold on.

10 A. Yes, I was.

11 THE COURT: Hold on.

12 (Pause)

13 The objection is sustained. The answer is struck.

14 MR. TURNER: No further questions, your Honor.

15 THE COURT: All right, Mr. Dratel.

16 MR. DRATEL: Thank you, your Honor.

17 CROSS-EXAMINATION

18 BY MR. DRATEL:

19 Q. Good afternoon, Mr. Duch.

20 A. Good afternoon.

21 Q. Now, you testified on direct about your deal with the
22 government, correct?

23 A. Yes, I did.

24 Q. And you said that under the charges that have been filed
25 against you by the government you face a penalty possibly of

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Duch - cross

1 anywhere from 5 to 40 years, right?

2 A. That's correct.

3 Q. And it is a mandatory minimum of five years unless you get
4 the letter from the government to the Judge about your
5 assistance, your substantial assistance, correct?

6 A. That is correct.

7 Q. Substantial assistance to the government, right?

8 A. That is correct.

9 Q. Now, you have a prior felony conviction, correct?

10 A. Yes, I do.

11 Q. Before the one that you pleaded guilty to regarding the
12 conduct you have talked about today, right?

13 A. Yes, I do.

14 Q. And you were aware that if the government chose to file
15 what's called a prior felony information against you, that
16 would double the mandatory minimum and make the maximum penalty
17 life in prison, right?

18 A. I don't know whether it would be life in prison or not. I
19 don't know about that.

20 Q. Well, you were informed that it would double the mandatory
21 minimum, correct?

22 A. Correct.

23 Q. And that it would increase the maximum, correct?

24 A. I'm not aware whether it would increase the maximum or not.

25 Q. And part of your agreement with the government is that they

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Duch - cross

1 are not going to file that prior felony information against
2 you, right?

3 A. There is no agreement on whether they'll file a prior
4 felony information or not.

5 Q. You understand they're not going to do that, correct?

6 A. I --

7 Q. Whether it is in writing or not, you are not expecting them
8 to go and file a prior felony information if they give you a 5K
9 letter and then increase your mandatory minimum to possibly 10
10 years, right? You don't expect them to do that?

11 A. My expectation is that they wouldn't do that but there is
12 no agreement stating that.

13 Q. It is something they are holding over your head, correct?

14 A. It's never been mentioned.

15 Q. It's never been mentioned.

16 Well, I want to show you what's been marked as 3514-2.

17 Let me start. You've met with the government in
18 preparation, right, for your testimony, correct?

19 A. Yes, I did.

20 Q. That goes all the way back to even -- withdrawn.

21 When you first got arrested you agreed to cooperate,
22 correct?

23 A. That's correct.

24 Q. You signed a consent form for searches, right?

25 A. Yes, I did.

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Duch - cross

1 Q. You made tapes of your supplier, right, trying to
2 incriminate him, correct?

3 A. I believe there was an audio recording made.

4 Q. Well, you made it, right?

5 A. I was a participant in making the recording, that's
6 correct.

7 Q. By the way, when you're doing -- by October 2013, you are
8 doing 6 to 700 bags of heroin a week, right? That's what you
9 said.

10 A. Not in October of 2013, no.

11 Q. So when were you doing that?

12 A. It would probably be in -- around April of 2013.

13 Q. Then you cut back?

14 A. And I was arrested around October of 2013.

15 Q. Right. It is six months later, right?

16 A. Right.

17 Q. You say you cut back in your heroin use in those six
18 months?

19 A. I didn't cut back, no.

20 Q. So you were high all the time, right?

21 A. I used heroin on a daily basis.

22 Q. You were high all the time, right?

23 A. I used heroin on a daily basis.

24 Q. That's not the question.

25 How many times did you use heroin a day to get

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Duch - cross

1 those -- that is about a hundred bags a day?

2 A. That's correct, up to a hundred bags a day.

3 Q. So you can't do them all at once, right; you'll kill
4 yourself, right?

5 A. I used heroin four to five times a day.

6 Q. And how long did it last?

7 A. Anywhere between six hours or so.

8 Q. So if you did that four or five times a day, you're high 24
9 hours a day, right?

10 A. I think there's a difference between being high on heroin
11 and having enough heroin so you don't actually become ill.

12 Q. So you did it so you won't become ill, right?

13 A. Part of the time, yes. Other times I used --

14 Q. You started to because you were in pain, right? You didn't
15 go from pain killers to heroin because you wanted -- withdrawn.

16 You went from pain killers to heroin back at the
17 beginning of your problem because you wanted to get high,
18 right, not because of pain?

19 A. I did it essentially for financial reasons. I mean, to
20 continue to sustain a pain killer addiction is quite expensive.
21 Heroin is a cheaper alternative.

22 Q. Are you saying that the getting high had no appeal to you?

23 A. I -- I -- I'm not saying it didn't have any appeal to me.

24 Q. Of course. You wanted to get high, right?

25 A. That wasn't the sole reason but it was a factor.

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Duch - cross

1 Q. It was a huge factor, wasn't it?

2 A. It was a factor.

3 Q. So getting back to your agreement with the government.

4 So you started cooperating immediately, right? And
5 then -- right? Immediately upon your arrest, you began
6 cooperating?

7 A. Yes, I did.

8 Q. And then that involved meeting with the government,
9 correct, to discuss your life history, your variety of things,
10 including your conduct with respect to selling heroin, right?

11 A. Yes, it did.

12 Q. OK. So one of those meetings was February 11, 2014, right?
13 I'm sorry. February 6, 2014, right?

14 A. I don't know if that was the date or not but it was
15 sometime in February, that's correct.

16 Q. You met in White Plains, right?

17 A. I did meet in White Plains in February.

18 Q. You met with an assistant United States Attorney, right,
19 and a DEA agent, right?

20 A. That's correct.

21 Q. And a Homeland Security Investigations agent, right?

22 A. That's correct.

23 Q. And your attorney?

24 A. Yes, I did.

25 Q. Now, at the beginning of that meeting, did the prosecutor

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Duch - cross

1 say to you that your predicate felony information would be
2 considered, right?

3 A. I don't know whether that was mentioned or not.

4 Q. Could it have been mentioned?

5 A. It might have been.

6 Q. Do you recall?

7 A. I don't recall it being mentioned.

8 Q. Let me show you what's marked as 3514-2, and ask you
9 whether the highlighted portion -- read it to yourself. Don't
10 read it out loud.

11 A. Sure.

12 Q. Just you could read the whole paragraph, if you want, for
13 context. Tell me whether that refreshes your recollection as
14 to whether or not the government said -- the Assistant United
15 States Attorney at that meeting said to you that the prior
16 felony information that they could file against you would be
17 considered.

18 (Pause)

19 A. No. I'm not sure who created this or what was -- what the
20 point --

21 Q. I am just asking you whether it refreshes your recollection
22 that at that meeting the Assistant United States Attorney
23 informed you that your prior felony and the prior felony
24 information that could be charged against you would be
25 considered. This is back in February of 2014.

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Duch - cross

1 A. It essentially states that A.U.S.A. --

2 Q. I don't want to know what it states. I want to know
3 whether it refreshes your recollection that that was told to
4 you at that meeting.

5 A. I don't recall it being told to me.

6 Q. In fact, you didn't sign a cooperation agreement until
7 December 10, 2014, right?

8 A. That's correct.

9 MR. DRATEL: Let me just get this back.

10 Q. Now, with respect to your agreement, you're charged in this
11 5-to-40 range that you're charged in in terms of a 5-year
12 mandatory minimum up to a maximum of 40, right? That's based
13 on selling more than 100 grams of heroin, correct?

14 A. That's correct.

15 Q. Now, we just saw that chart that you estimate that you sold
16 3.1 kilograms of heroin, correct?

17 A. That's correct.

18 Q. Is that 30 times more, right?

19 A. That's correct.

20 Q. So -- and you knew, when you made your deal with the
21 government, that at one kilogram or more it's a mandatory
22 minimum of 10 years and a maximum of life, right?

23 A. That's correct.

24 Q. And you knew that with your prior felony conviction, if
25 they filed a prior felony information, that would be a minimum

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Duch - cross

1 of 20 years and a maximum of life, correct?

2 A. That's correct.

3 Q. Now, this agreement that you have with the government
4 doesn't just cover any drug dealing you might have done on Silk
5 Road, correct?

6 A. I'm not sure what the question is.

7 Q. The government's not going to prosecute you for other
8 crimes that you've committed, right?

9 A. I'm not aware that that language is in the agreement.

10 MR. DRATEL: If I may approach?

11 THE COURT: Yes.

12 MR. DRATEL: 3514-17.

13 THE COURT: Just for your planning purposes,
14 Mr. Dratel, you've only got a couple of minutes left today and
15 then we will pick up tomorrow.

16 MR. DRATEL: OK. I will just go through this one
17 thing.

18 THE COURT: Yes. Sure.

19 MR. DRATEL: If I may stay up here, your Honor,
20 because this is my copy.

21 THE COURT: As long as you keep your voice up so we
22 all can hear you.

23 MR. DRATEL: I will stand over here so that the
24 reporter can hear me.

25 BY MR. DRATEL:

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Duch - cross

1 Q. So doesn't the agreement -- I'm trying to refresh your
2 recollection here, that the agreement says that you will not be
3 prosecute, except for criminal tax violations, for, in addition
4 to the Silk Road sales, the theft, purchase and personal use of
5 ecstasy, GBH, cocaine, heroin, and various prescription drugs
6 from 1994 through 2013?

7 A. OK.

8 Q. That's part of your deal, right?

9 (Pause)

10 Do you want to look at the whole document?

11 A. Sure.

12 (Pause)

13 Right, that I won't be prosecuted for any theft,
14 purchase or personal use of drugs.

15 Q. Right. And those were all illegal drugs that we are
16 talking about, correct, in that -- even though we haven't
17 talked about GBH, right?

18 A. Right.

19 Q. It also includes that you will not be prosecuted for theft
20 of property from your father in various Wal-Mart stores in
21 approximately 2008 and 2009, right?

22 A. That is correct.

23 Q. And that you will not be prosecuted for the throwing of a
24 telephone at your girlfriend in approximately 2008, right?

25 A. I don't see that mentioned there.

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Duch - cross

1 Q. (Hanging)

2 A. I see it now.

3 Q. And the trading of heroin for prescription medications from
4 approximately 2008 through approximately 2009, right?

5 A. That's correct.

6 Q. Now -- by the way, you signed your cooperation agreement,
7 correct?

8 A. Yes, I did.

9 Q. And you read it before you signed it, correct?

10 A. Yes, I did.

11 Q. And, in fact, when you pleaded guilty, the judge asked
12 you -- and you were under oath -- have you read the agreement,
13 correct?

14 A. Yes, I did.

15 Q. But somehow you didn't know today what was in the
16 agreement, right?

17 A. I knew what was in the agreement. I just wasn't -- I don't
18 think that I was exactly clear on the language that was in
19 there.

20 MR. DRATEL: This is a good spot, your Honor.

21 THE COURT: All right. Thank you.

22 Ladies and gentlemen, we'll break for today. We will
23 pick up tomorrow, on Thursday, at 9:30, our usual time. And
24 I'll try to have us start at 9:30. I know you folks are good
25 about being here.

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Duch - cross

1 I want to remind you still, as usual, the same
2 reminder not to talk to anybody about this case. Thank you.

3 THE CLERK: All rise as the jury leaves.

4 (Continued on next page)

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(Jury not present)

THE COURT: Mr. Marshal, you may bring the witness back.

(Witness not present)

THE COURT: All right. Ladies and gentlemen, let's all be seated.

Is there anything in particular that you folks would like to raise? I just wanted to talk about sort of going forward and the timing and things of that nature so I can get a sense of how these witnesses are progressing. We've only got a few witnesses left in the government's case. And I also wanted to just mention that we'll be picking up with the jury instructions tomorrow morning unless there are other housekeeping matters tomorrow morning that arise and that we should take up first.

Those are the only two things that I wanted to sort of go over. So, schedule first. But are there things that you folks would like to address?

MR. TURNER: No, not besides the scheduling.

THE COURT: Mr. Dratel.

MR. DRATEL: Yes, your Honor, in terms of scheduling.

THE COURT: In terms of schedule, but other than that?

MR. DRATEL: Not other than scheduling.

THE COURT: Why don't you give me a sense of, Mr. Turner and Mr. Howard, how things look. Actually, you've

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1 got three witnesses left after this witness, and two of them
2 appear to be quite short and one of them a little bit -- one of
3 them longer.

4 MR. TURNER: Right. I think -- well, the next witness
5 will be short, Agent D'Agostino, and then for Ilhwan Yum I
6 think it may be two to three hours is our best guess. And
7 Brian Shaw will be maybe three hours. But there are a number
8 of exhibits to be read in during Mr. Shaw's testimony and it is
9 always hard to gauge that so it could go longer. So we could
10 certainly be done by tomorrow or at the latest by Monday.

11 THE COURT: All right. So sometime Monday. That
12 corresponds with what we had discussed previously even with the
13 snow.

14 All right. If the government rests tomorrow, I will
15 not require the defense to start their case tomorrow. We can
16 pick that up on Monday. It doesn't sound like that is a likely
17 scenario, frankly, anyway. It sounds like the most likely
18 scenario is you are going to have some amount of time going
19 into Monday.

20 Mr. Dratel, in terms of timing from your perspective?

21 MR. DRATEL: It is difficult to determine because I
22 know that the government was trying to look on the outside as
23 to what these times would be, and some of them have been faster
24 for a variety of reasons. But the question with Agent Yum is
25 Agent Yum is the witness after Agent D'Agostino. So Agent

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1 D'Agostino is going to be short and come right after Mr. Duch.

2 With respect to Agent Yum, we received Monday night a
3 spreadsheet that he prepared on Bitcoin Wallet and bitcoin
4 transactions that has millions of pieces of information in it
5 without any corresponding 3500. I'm not suggesting that they
6 haven't turned over 3500 that doesn't exist. I am really not
7 in a position to cross-examine him on that tomorrow. I thought
8 I would have until Monday based on the schedule as it was
9 projected.

10 As it looks now, we will probably finish his direct
11 sometime early to mid-afternoon. I would just ask that we
12 break at that point. We could finish the charge conference at
13 that point.

14 As far as our case, I'll let Ms. Lewis talk to the
15 Court about that because she has been coordinating that. But,
16 with respect, I think it is really impossible -- we were trying
17 to get up on it but, you know, at the same time as doing
18 everything else in the case, it's really not in a position to
19 absorb -- and it is really just in many respects numbers. It
20 is a spreadsheet.

21 THE COURT: Do I have this information in my binder
22 that you folks are planning on using with Agent Yum?

23 MR. TURNER: No, not yet, your Honor.

24 The issue here is this is something the defendant
25 announced in their opening, that the bitcoins on the laptop did

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1 not come from Silk Road, it came from bitcoin trading or mining
2 or whatever. They opened that door, and we have been doing our
3 best to complete an analysis by looking at the addresses on the
4 wallets at issue in the block chain and looking to see the
5 transfers from the Silk Road wallet to Mr. Ulbricht's laptop
6 and to prepare that as soon as we could. And we have provided
7 Agent Yum's basically draft work as soon as we could.

8 THE COURT: When did you provide it?

9 MR. TURNER: We provided it to them Sunday night.

10 THE COURT: And when was the material underlying -- so
11 on Sunday night. Just so I'm clear, this past Sunday, which
12 would have been January 25?

13 MR. TURNER: I think so, your Honor.

14 THE COURT: All right.

15 MR. DRATEL: Your Honor, I'm not suggesting that it
16 was delayed or --

17 THE COURT: No. I am just trying to get a sense of
18 timing.

19 You produced the spreadsheet?

20 MR. TURNER: I produced the spreadsheet. The actual
21 underlying information has been produced to the defense months
22 ago. So you have the image of the defendant's laptop. That
23 contains the Bitcoin Wallet files that were on the computer.
24 You have the images of the Silk Road servers. That contains
25 the wallet files that were on the Silk Road servers. It is a

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1 very simple matter to look at the addresses in those wallets
2 and see how many addresses sent money from the Silk Road
3 servers to the addresses on Mr. Ulbricht's laptop. So this is
4 certainly an analysis that could have been done by the defense
5 easily long ago. And, you know, this is what we did in
6 response to their statement in their opening that the bitcoins
7 didn't come from Silk Road.

8 MR. DRATEL: All I am asking is to put it over, the
9 cross, until Monday morning.

10 THE COURT: Well, the issue is that right now it looks
11 like there is some chance that we will be into the very last
12 witness tomorrow afternoon -- I think a substantial chance.
13 Now, I don't know what you've got with Mr. Duch and you'll -- I
14 don't want to unduly delay that. But let me get a full picture
15 of where we are with the defense case as well in terms of
16 timing to determine what we're looking at.

17 So, Ms. Lewis, why don't you give me a sense, first,
18 at this point in time how many witnesses do you have and what
19 is the approximate duration?

20 MS. LEWIS: So at this time we put the government on
21 notice of eight witness, including one expert.

22 THE COURT: OK.

23 MS. LEWIS: The majority of those are lay witness.
24 All of the witnesses are out-of-town witnesses, some out of the
25 country -- at least one out of the country. And given that, we

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1 have been trying to obviously keep them abreast of the duration
2 of the government case and we have been adjusting that as we
3 have been going, but even with those adjustments the case,
4 obviously, has been moving faster than we had anticipated.

5 So I told the witnesses to this point that they would
6 not be -- could not expect to be called before Tuesday, just
7 because there was no way that we would finish before then.
8 Obviously, with the snowstorm, too, we would not know how that
9 was going to go.

10 THE COURT: Where does the expert in terms of your
11 planning fall generally within your current anticipated order?
12 Is he or she first, middle, last? Just so I can get a sense.

13 MS. LEWIS: I guess in the middle, your Honor.

14 THE COURT: The middle. All right.

15 Are the other seven witnesses, are they short?

16 MS. LEWIS: They are character, fast witnesses.

17 THE COURT: Are they half-hour witnesses on direct,
18 something in that nature, or more?

19 MS. LEWIS: I think so. Again, we are still kind of
20 ironing out exactly what they will testify to, but I believe
21 somewhere --

22 THE COURT: I am not going to hold you to a timeframe,
23 a certain timeframe. I am trying to get a sense of whether or
24 not they are going to be half a day --

25 MS. LEWIS: These are short witnesses.

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1 THE COURT: All right. So short witnesses. So there
2 is seven of those and then one expert. How long do you expect
3 the expert to be on direct?

4 MR. DRATEL: I would think, at the outside, two hours
5 at the outside.

6 THE COURT: All right. And is the defendant going to
7 testify? At this point in time, I am not having you commit to
8 that but that's obviously a longer witness than any of these.

9 MR. DRATEL: Right.

10 THE COURT: And I told you I would start asking you on
11 Wednesday.

12 MR. DRATEL: True. As of right now, the decision has
13 not been made because, obviously, it is not my decision so.

14 THE COURT: Absolutely. We talked about that at the
15 final pretrial. It is ultimately Mr. Ulbricht's decision as to
16 whether or not he wants to testify.

17 MR. DRATEL: Right. And so -- but we'll try to have
18 an answer as soon as we have an answer. I just, you know --

19 THE COURT: Well, in terms of timing, I mean, can you
20 give me a sense as to whether or not you're leaning for it or
21 you're really just right in the middle right now?

22 MR. DRATEL: I can't say where we are on that, your
23 Honor.

24 THE COURT: OK.

25 MR. DRATEL: I don't want to --

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1 THE COURT: No. That is fine. I just needed to get a
2 sense of it. You are not in your case yet so you don't have to
3 make a decision.

4 I would think that Mr. Ulbricht is a -- I'm going to
5 say a two-day witness, perhaps more, if he's called. I don't
6 know. It depends on what occurs.

7 MR. DRATEL: I could tell you about the rest of our
8 case. I think the rest of our case would be -- my sense would
9 be that it would not be longer than two days is my estimation.
10 It could be shorter. It could be a day and a half. Obviously,
11 I don't know what the extent of the cross-examination would be,
12 but I am just anticipating just from my --

13 THE COURT: All right. Let me ask the government.

14 MR. DRATEL: -- perspective.

15 THE COURT: Let me ask the government about Mr. Shaw.

16 Is there any possibility that the government could
17 call Mr. Shaw before Mr. Yum? Is it a "Mr." Yum or "Ms." Yum?

18 MR. TURNER: Yes. Mr. Yum.

19 THE COURT: So that we could swap that order.

20 MR. TURNER: Well, I think the problem from the
21 government's perspective is that Mr. Yum sets the stage for
22 Mr. Shaw because he explains not only about the bitcoins but he
23 participated in the seizure of the servers and could explain
24 how these servers are known to be Silk Road servers. So it
25 would be a little bit out of the left field otherwise for the

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1 agent -- for the jury to hear testimony from Mr. Shaw, who
2 looked at the underlying servers, without understanding where
3 the data came from. That is our concern.

4 THE COURT: All right. We are going to then proceed
5 in the ordinary course. Mr. Duch will take however long he is
6 going to take. Mr. D'Agostino will take however long he is
7 going to take. We will then proceed into Mr. Yum.

8 It may or may not be the case that we get into
9 cross-examination of Mr. Yum. It may also be the case that
10 Mr. Yum is held over after his direct for cross until after the
11 weekend.

12 So we'll proceed. If there is an application renewed
13 tomorrow if his direct is finished and he's on cross and there
14 is a renewed application that you haven't been able to get to
15 it, let's see where we are in the afternoon.

16 MR. DRATEL: Yes.

17 THE COURT: And we'll take it as it comes, but I would
18 like to just proceed.

19 But I understand your point, Mr. Dratel. So get
20 prepared for what you know you can do with Mr. Yum on the
21 assumption that if the government gets to Mr. Yum at noon, I
22 don't think it sounds likely but if they did then we would
23 probably finish Mr. Yum tomorrow, but there is a chance that we
24 can be held over the weekend. But I'm not going to make it
25 occur in that manner.

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1 MR. DRATEL: All right. You know, I'll do what I can,
2 but like I said, this is an avalanche of material.

3 THE COURT: I understand. The issue arises because of
4 what occurred in the opening, which opens the door to this
5 and --

6 MR. DRATEL: I don't have any argument with that.

7 THE COURT: I know. But it is possible that you had
8 in your pocket the very same information going the other way.
9 I don't really know which way any of this information goes.

10 MR. DRATEL: But --

11 THE COURT: So this is -- the topic, once it was
12 introduced, put all of this in play, and you introduced it.

13 MR. DRATEL: We got a list of exhibits in early, you
14 know, in early December that, you know, don't include anything
15 in this, but then we go forward for six or seven weeks and then
16 all of a sudden the defendant -- we're getting a dozen exhibits
17 every day basically that are new. You know, the entire exhibit
18 list has been transformed either through additions,
19 subtractions, modifications. We have been doing this every
20 night. We get exhibits at 8:30 in the morning. I'm not
21 complaining about it, but I'm saying it has an impact on the
22 amount of work I can do on things that come in that involve
23 thousands and thousands of identified information and perhaps
24 millions of transactions. It is just humanly impossible.

25 That's all.

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1 THE COURT: Well, then, it was a door that when opened
2 had some difficulties in terms of the amount of evidence that
3 would be responsive to it behind it.

4 In any event, trial is like this. We'll proceed as
5 I've indicated and we'll pick up tomorrow. We'll start with
6 the jury instruction tomorrow after we have dealt with
7 housekeeping.

8 Ms. Lewis.

9 MS. LEWIS: I'm sorry. I just wanted to raise again.
10 With regard to the defendant's case, though, we still have this
11 issue where all our witnesses are prepared to be here by
12 Tuesday but not necessarily by Monday.

13 THE COURT: You need to get somebody here by Monday.

14 MS. LEWIS: I will do my best to get at least one
15 person here by Monday --

16 THE COURT: Well, get as many as you need -- as you
17 guys know from the final pretrial, get as many as you need to
18 fill up the remainder of the day. I don't know what that is
19 going to be.

20 MS. LEWIS: I only say that because these are lay
21 people coming from across the country. It is difficult to get
22 them.

23 THE COURT: I hear you, but this is not a particularly
24 new issue for anyone. I mean, this is just the way it goes.
25 You will call your witness. You will start your case the

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1 moment the government rests, after any motion are made. We'll
2 deal with those. And we'll proceed apace.

3 So you can confer with the government on precise
4 timing. I do understand the potential inconvenience to the
5 witnesses and the logistics and the difficulties with all of
6 it. I'm not suggesting it doesn't exist in the real world
7 where these human beings actually live and have to get onto an
8 airplane and have to know when to get onto an airplane, and if
9 they are in far-flung places, that airplane ride might be quite
10 long and they need to know in advance. I'm not suggesting that
11 I don't understand, but I am stating that we will proceed to
12 use the time.

13 We're going to run into some issues with a couple of
14 the jurors, as you folks know, in terms of their employment.
15 We're close enough that I want to make sure that they don't
16 feel in any way rushed during their deliberations, and I think
17 right now we've got plenty of time.

18 703B I wanted to just talk about for one moment. That
19 is the list of addresses. I wanted to indicate that I do
20 believe that Mr. Dratel was correct in the sense of it being in
21 for the truth. I don't agree that there is a hearsay problem.
22 While the declaration underlying the actual information is a
23 declaration of a buyer -- in other words, the buyer says to the
24 seller this is the address to which you send the drugs -- the
25 seller, which is Mr. Duch in terms of his testimony, then

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1 extracts that information. He has testified he sold product to
2 those individuals. And he then maintains those records as
3 business records of his rather substantial drug dealing
4 business. So the basis of the Court's decision on that was
5 business record.

6 Anybody want to suggest that they had a different --
7 does the government want to suggest they had a different basis?

8 MR. TURNER: I think, alternatively, your Honor, it is
9 just a record of the addresses where he shipped his shipments
10 to. So it would just come in for that purpose.

11 THE COURT: No. It came in -- I think it depends on
12 what the use is going to be. If the use is going to be related
13 to venue in some way, then it's coming in for the truth and it
14 is not just a record for the fact that it was said. It would
15 be coming in for the fact that it went to these particular
16 locations. I don't know if that is the government's plan or
17 not.

18 MR. TURNER: But in terms of the hearsay, I think it
19 is just a record of his own actions, that he shipped product to
20 these various address. He is just keeping a record. I think
21 it comes in under the business records exception, anyway. But
22 it is also just him recording I shipped 10 bags out to this
23 address, 20 bags out to this address, and that's his own.
24 There was no statement there. It was just his own activities
25 that he recorded.

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1 THE COURT: I understand the government's position.
2 All right. That is an additional basis.

3 Mr. Dratel.

4 MR. DRATEL: That chart, those two charts are not
5 business records because --

6 THE COURT: Not the -- the chart was extracted as in
7 the nature of a demonstrative, as I understand it, from the
8 information contained on the spreadsheet.

9 Did I get that wrong?

10 MR. TURNER: A summary, your Honor.

11 THE COURT: A summary. So it is in as a summary of
12 information. But you still, I think, had your hearsay
13 objection to that.

14 (Continued on next page)

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Trial

1 MR. DRATEL: A witness can't create something and then
2 call it a business record when he's created it for the
3 litigation.

4 MR. TURNER: To be clear, the spreadsheet he kept in
5 the ordinary course of business. Then he can summarize those
6 records for the purposes of trial.

7 THE COURT: That was my understanding as to the way in
8 which things had occurred.

9 Thank you. Let's all resume tomorrow morning at 9:00.
10 Thank you.

11 (Adjourned to January 29, 2014 at 9:00 a.m.)

12 * * *

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GOVERNMENT EXHIBITS

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